



Mr E. P. Smith
Genl

U. S. Legation

Yokohama Japan 20th
Sept 1870

Quinn introduced to Congress?

Drafted reply Nov 30 - 1870

Dispatch from

G. E. Del Long

Minister Resident

To

Hon. Hamilton Fish

Secy of State

Regulations for the Consular
units in Japan, with one
enclosed.

United States Legation
Yokohama Japan
September ~~17th~~^{20th} 1870

Sir,

Accompanying this despatch,
Enclosure N^o 1, I transmit to you a
code of Regulations or a Civil Practice Act,
for the Government of the United States
Courts within this jurisdiction.

It is drawn after the Act of
California, being almost a copy thereof
except in some matters abbreviated, and
its language so changed as to make it
applicable to Courts in this Empire.

Its great detail may surprise
you, and in your judgment it may seem
unnecessary, in excuse thereof I have
only to urge, that every variety of question
in the practice of Courts in any of the
United States, is continually arising here,
and very large amounts of property are
to the frequently

Hon. Hamilton Fish

Secretary of State
Washington
D.C.

involved, and in my judgment this gives rise to the necessity of a Code making the practice in all of our Consular Courts in this Empire uniform.

There are no Statutes of the United States upon this subject of my knowledge, and our Courts left here to the uncertain and varying guide of the common law of the United States, which means the laws of every state with all of their conflicts, leaves everything in uncertainty and doubt, leading to endless confusion and interminable complainings.

To relieve this condition of things I have undertaken this task and send you the result of my labors. — I am aware that it should be followed or accompanied by more complete Regulations in relation to Criminal Practice, and also a Code for regulating the settlement of the Estates of Deceased persons; and with some Regulations relative to Insolvency &c, but as no such immediate or pressing necessity for those exists, as did for these,

I have suspended this work, until your
views upon what I have done and
what yet should be done can be taken by
me.

My reason for having
adopted the California Act as a guide,
is because it is in my opinion a plain
and good one, and as our interests
here are more intimately connected
with that State than any other, the
most of our citizens resident here are
familiar with it from having resided
there.

In addition to this I recd
by the last Mail that an Act has passed
Congress providing for Appeals in certain
cases to courts in that State. Presuming
that that Act would become a law, it
seemed to me to be the more proper that the
practice governing Courts in that State than
any other should be adopted.

The second section of that
Act may be construed to mean, that I as
Minister here, am no longer empowered
to make rules and regulations, but that
that power is now lodged with you. I am

in doubt as to the meaning of that section
and therefore for this reason also I have
not completed the work I had intended
to do, but have issued this decree conscious
that it could ~~not~~ do no harm in any event,
and having it mainly completed before
I received notice of the probable passage of
that law. I considered it wiser to
issue the decree and forward my work
than to leave the courts here for a longer
period without some regulations.

Also in this connection I
beg leave to call your attention to the
provisions of the Treaty of July 29th 1858,
between Japan and the United States,
which in section Twelve, provides that
decrees for the enforcement of the Treaty
relations shall be prepared by the Minister,
thus in my opinion leaving it very questionable
as to whether Congress has the power to
devolve that task upon any other authority.

You will observe that all
Acting Consuls in Japan have endorsed
their assent to the same.

Trusting to a kind approval

of what I have done, and some instructions
as to whether to proceed farther or not,

I have the honor to be

Sir

Most Respectfully,

Wm. D. Long

U. S. Minister Resident

41 Cong. 3 Sess. 1871

Senate Ex. Doc. 25

Regulations

For the Consular Courts of the United States of America
in Japan.

In pursuance of Section 5th of the Act of Congress approved June 22nd 1860, entitled, 'An Act, to carry into effect certain provisions in the Treaties, betwene the United States, China, Japan, Siam, Persia, and other countries, giving certain judicial powers to Ministers and Consuls, or other functionaries of the United States in those countries, or for other purposes, S. C. C. Do Long, Minister Resident of the United States to the Empire of Japan, do hereby Decree the following rules and regulations, which shall have the force of Law in the Consular Courts of Japan.

1st Every Citizen of the United States residing within the limits of the ports open to foreign trade in the Empire of Japan, is required to be enrolled in the Consular register; and shall apply in person at the Consulate, within thirty (30) days after the publication of this decree. Every American citizen who may arrive within the limits of a port, save and except one who may be enrolled on the Muster roll of an American Vessel, shall apply within ten (10) days at the consulate to be enrolled. Any American Citizen neglecting to be enrolled, will not be entitled to claim the protection or intervention of the Authorities, unless he can

See Regulation

furnish a valid reason for not doing so, and shall be subject to a fine of ten dollars (\$10).

2nd In all cases when an applicant to be enrolled, cannot furnish a passport or other legal proof of his citizenship, he shall make an affidavit in writing, that he is a citizen of the United States, which shall be filed by the Consul, and the Consul may also require, other and further proof of the fact before enrolling him.

Civil Proceedings

1st All civil actions in Courts of the United States in Japan, must be commenced by a complaint or petition in writing verified by the oath of the party, or his agent, or Attorney, before the Judge of such court.

2nd There shall be but one form of civil action, for the enforcement or protection of private rights, and the redress or prevention of private wrongs. In such action, the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

3rd Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in this decree.

4th In case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set off, or other defence existing at the time of, or before

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notice of the assignment; but this section shall not apply to a negotiable promissory note, or bill of Exchange transferred in good faith, and upon good consideration before due

5th When a married woman is a party, her husband shall be joined with her, except when the action concerns her separate property, or when the action is between herself and her husband, when she may sue, or be sued alone.

6th

When an infant is a party, he shall appear by Guardian, who may be appointed by the Court, if none has already been appointed at the time.

7th All persons having an interest in the subject of the Action, may be joined as plaintiffs; and any person who has or claims to have an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the Question involved therein, may be made a defendant.

8th Persons severally liable upon the same obligation or instrument, including the parties to bills of Exchange and promissory notes and sureties on the same, or separate instruments, may all or any of them be included in the same action, at the option of the Plaintiff.

9th An action shall not abate, by the death or other disability of a party, or by a transfer of any interest therein, if the cause of action survives or continues; but, in case of the death or disability of a party, the action may be continued by or against his representative or successor in interest, or the Court may allow the person to whom the transfer is made, to be substituted in the action.

10th Actions shall be brought, and may be tried in the port or city where one or more of the parties to the action resides, or where the cause of controversy accrued, subject to the power of the Court to change the place of trial, when the convenience of witnesses, and the end ends of justice would be promoted thereby; or, ^{when} from any cause, the judge is disqualified from acting in the action.

11th The complaint shall be at once filed by the court, with a specification of the day, month, and year when the same was received for filing, and at any time within one (1) year thereafter, summons may be issued thereon as directed by the plaintiff. The summons shall be signed by the Court, directed to the defendant, and issued under the seal of the Court. It shall state the parties to the action, the Court in which it is brought, the general nature of the action, and require the defendant to appear, and answer the Complaint within the time mentioned in the next section, after the service of summons, exclusive of the day of service; or that a judgment by default, will be taken against him

according to the prayer of the Complaint; stating the sum of money, or other relief demanded in the complaint: but the Court in all cases, when the default of one, or all of the defendants is entered, shall require proof to be made in support of the plaintiff's cause of action, and shall only allow a judgment for such relief as the evidence offered shows the plaintiff to be entitled to.

12th The time in which the summons shall require the defendant to answer the complaint, shall be as follows:

1st If served on the defendant in the Port or City where the action is brought, within three (3) days;

2^d If elsewhere within the Empire of Japan, within twenty (20) days; or,

3rd, If without said Empire within forty (40) days.

The Court may, for good cause shown at anytime within Six (6) months from the date of entry of any judgment by default, vacate, and set the same aside.

13th The summons shall be served by the Marshal to whom it is directed, or by some person specially deputed by him, or by the Court; and it shall be returned, with the written certificate of such person, showing when, where, and upon whom it was served. If the defendants can be found, service shall be made by delivering to ~~him~~ ^{him}, a copy thereof. If the suit be against a corporation, by delivering a copy to the President, Secretary, or other managing agent thereof. If against a minor, by delivering a copy to such minor,

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and also, to his Father, Mother, or other guardian if he have such, residing in this Empire. And if against a person judicially declared to be of unsound mind, and for whom a Guardian has been appointed, by delivering ^{of} a copy to such Guardian, provided, that, when the person on whom service is to be made, resides out ~~of~~ of the Empire of Japan, or has departed there from, or cannot, after due diligence, be found therein, or conceals himself to avoid the service of summons, and such fact be made to appear to the satisfaction of the court, service may be made by Publication of the summons, in some newspaper published at the port or the City, where the action is brought, if there be one; but if there be none, in a Newspaper published the nearest to said port, for such a length of time, and in such manner as the Court may direct; not less however, than once a week for the period of three (3) weeks. Proof of service of summons, so made shall be by the affidavit of the printer, or publisher of such newspaper. The voluntary appearance of the defendant shall in all cases be deemed equivalent to a personal service upon him of the summons, and a person shall be deemed to appear, when he answers or demurs to the Complaint in writing, or files a written and verified statement in the action, confessing Plaintiff's right of action or some portion thereof, and consenting that judgment for such amount be entered.

14th The pleadings on the part of the plaintiff shall be

limited to a complaint or petition, and a demurer to the defendant's answer; and on the part of the defendant, to a demurer and answer to plaintiff's complaint; provided however, that the defendant may in his answer claim affirmative relief against the plaintiff, and ^{all} matters contained in the defendant's answer, shall be deemed to be denied by the plaintiff unless specially admitted by him.

The pleadings shall consist of stating the ^{cause} ~~cause~~ of action or defence, with a prayer for the relief asked for, and all answers except demurs raising issues of law alone, shall be viewed as the complaint and petition are required to be. All pleadings shall be filed by the court, with a note of the day, month, and year; and if a defendant in his answer prefers a cross demand, or other affirmative relief against the plaintiff, the plaintiff shall be allowed, if he requires it, the same length of time to prepare for the trial of the cause, as that which the defendant was allowed for answering in the case after service of the summons upon him.

15th A pleading may be demurred to if upon its face it shows that the court has no jurisdiction over either the parties, or their cause of action; or that the plaintiff has not the legal capacity to sue, or that there is a defect of parties, or an improper joinder of several causes of action, or that no cause of action, or defence is stated in the pleadings. The demur must distinctly state the grounds upon which it is based, and in case a

demur to a pleading is sustained; the Court shall in all cases allow the party against whom the judgment ^{rendered} ~~is~~ ^{is} a reasonable length of time in which to amend, ~~and~~ serve, and file his amended pleadings. All material allegations contained in the complaint, and not denied specifically in the answer thereto, shall be considered as admitted.

16th The counter claim mentioned in section fourteen, (14) shall be one existing in favor of the defendant or plaintiff, and against a plaintiff or defendant, between whom a several judgment might be had in the Action, and arising out of one of the following causes of action:

1st a cause of action arising out of the transaction set forth in the complaint or answer as the foundation of the Plaintiff's claim or Defendant's defence, or connected with the subject of the action.

2^d In an action arising upon a contract; any other cause of action arising also upon contract, and existing at the time of the commencement of the action.

17th It shall not be necessary for a party to set forth in a pleading, the items of the account therein alleged; but he shall deliver to the adverse party, within three (3) days after demand thereof in writing, a copy of the account or may be precluded from giving evidence thereof.

18th The Plaintiff may unite several causes of action in the same Complaint, when they all arise out of:

- 1st, Contracts expressed or implied;
- 2^d Claims to recover specific real property, with or without damages for waste or detention thereof, and the rents, and profits of the same;
- 3^d Claims to recover specific personal property, with or without damages for the detention thereof;
- 4th Injuries to character, person, or to property, but the causes of action so united, shall belong to one only of these causes of actions, and shall effect all of the parties to the action, and not require different places of trial, and be distinctly, and separately stated.

19th The Court may in furtherance of Justice allow amendments to pleadings by adding, or striking out the name of a party, or by correcting a mistake in the name of a party, ^{or any other mistake;} or it may also enlarge the time for filing an answer, or demurr, ^{to a demurr} to an answer, or relieve a party from a judgment obtained against him by fraud, or through his mistake in advertence, surprise or excusable neglect.

20th If the Defendant appears and answers, the Court having both parties before it, shall before proceeding further, encourage a settlement by mutual agreement or by submission of the case to referees agreed on by the parties; a finding by a majority of whom, shall decide the Case, and be entered as a judgment by the Court, subject to appeal or motion for a new trial, as in cases of ^{other} judgments, and upon similar grounds.

21st On Application of either party and an advance of the fees, any American Citizen residing in the Empire of Japan, may be compelled to attend as a witness upon any Court, in the Empire, and may be compelled to bring with him, and produce in such Court, necessary books, papers &c, in his possession, or under his control.

22nd An order to arrest the defendant in a civil action, may be made by the court in which the action is brought, or is pending, whenever it shall be made to appear to the satisfaction of the Court, by an affidavit in writing, that the defendant is about to depart from the Empire with the intent to defraud his creditors, or that the defendant has, whilst acting in either, an official, fiduciary, or professional character, embezzled, or fraudulently misapplied, or converted to his own use, monies or property of his principal; or When the action is to recover the possession of personal property, when the property, or any portion thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken possession of by the Marshal; or when the defendant has been guilty of fraud, in contracting the debt, or incurring the obligation for which the action is brought, or in concealing, or in disposing of the property, for the taking, detention, or conversion of which, the action is brought; or when the defendant has removed, or disposed of his own property, or is about.

to do so, with intent to defraud his creditors. Before making the order, the Court shall require the plaintiff to enter into an undertaking, with two or more sureties, citizens of the United States, and residents of the Empire of Japan; in a sum of not less than five hundred dollars; conditioned, to pay the defendant such cost and damages as he may sustain, by reason of the arrest, if judgment be in his favor, not exceeding the amount mentioned in the bond. The sureties shall justify on the bond, by affidavit showing that they are American Citizens, residents of the Empire, and worth the sum mentioned in the undertaking; which Bond shall be at once filed by the Court.

23^d The order may be made at any time after the summons is issued, it shall be directed to the Marshal, and shall direct him to arrest the defendant, and to hold him to bail in a specified sum, and return the order within a time specified to the Court that issued it. A copy of the affidavit and order of arrest shall be delivered to the Marshal, who, upon arresting the defendant, shall deliver to him a copy of each; and shall execute the order, by arresting the defendant, and holding him in custody until he shall be discharged according to law.

24th The Defendant at any time before execution, shall be discharged from arrest, either, upon giving bail in the amount stated in the order of arrest, with two or more sureties, citizens of the United States, who shall —

justify as such on said Bond, and to the further effect, that they are residents of the Empire of Japan, and worth respectively, the amount stated in the order; conditioned, that the defendant will at all times render himself answerable to the process of the Court, during the pendency of the action, and to the execution of the judgment therein; or that he will pay the Plaintiff, any judgment that may be recovered in said action; or the defendant may be discharged from arrest, by depositing with the Court, the amount of money mentioned in the order of arrest.

25th In an action brought to recover specific personal property, if the plaintiff make and file with the Court at anytime before the defendant appears, and answers, in the action, an affidavit showing: That the plaintiff is the owner, or entitled to the possession of the property, (particularly describing it); That the property is unlawfully detained by the defendant, the value thereof, The cause of the detention to the best of his knowledge, and that the same has not been taken or seized by process issued out of any court; he shall be entitled to claim the delivery to himself, of such property as herein after provided.

26th The plaintiff, or his attorney, may by endorsement in writing on such affidavit, require the marshal to deliver the property therein mentioned to him, and it shall be the duty of the Marshal, to whom the same is directed, upon the receipt of the affidavit, and notice, with a sufficient undertaking executed by the plaintiff with two or more sufficient sureties, to be approved by the Marshal; to the effect that

they are bound to the defendant in double the value of the property as stated in the Affidavit, for the prosecution of the action, for the ~~return~~ of the property to the defendant if return thereof be adjudged, and for the payment to him of such sum as may for any cause be recovered against the plaintiff, the Marshal shall forthwith take the property into his possession, if he find it in the possession of the defendant, or his agent, and he shall also without delay serve on the defendant, a copy of the affidavit, notice, and undertaking, by delivering the same to him personally if he can be found, but if he can not be found, by leaving the same at his usual, or last place of residence.

2^d At any time before the delivery of the property to the plaintiff, the defendant may require the return thereof, upon giving to the ~~Marshal~~ a written undertaking, executed by two or more sufficient sureties, to be approved by the Marshal, to the effect that they are bound in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged; and, for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within three days after the service of the notice on the defendant, and the taking of the property, it shall be delivered to the plaintiff, unless it be claimed by some third person, in which case the Marshal must at once notify the plaintiff of such claim, and unless the plaintiff, within two days thereafter give to the —

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Marshal an undertaking, with two sufficient securities in double the value of the property so claimed as stated in the affidavit, conditioned to save him the Marshal harmless against any cost, or damages he may be put to, by said claimant, if he holds the same, or delivers it to the plaintiff, he the Marshal may surrender such property to the said claimant

28th In all cases, the securities to be sufficient on any undertaking, must by affidavit attached to such undertaking, affirm on oath, that they are citizens of the United States, residents of the Empire of Japan, and worth respectively, the sum for which they thus bind themselves, in property, situated in said Empire, not exempt from execution, and over and above all of their just debts and legal liabilities

29th An Injunction, is a writ or order, requiring a person to refrain from a particular act. This order, or writ may be granted by the Court in which an action is brought, when it shall appear, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission, or continuance of the act complained of, or when it shall appear that the commission or continuance of some act during the litigation, would produce great, or irreparable injury to the plaintiff, or when it shall appear, that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

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Japan,

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29th An Injunction, is a writ or order, requiring a person to refrain from a particular act. This order, or writ may be granted by the Court in which an action is brought, when it shall appear, that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission, or continuance of the act complained of, or when it shall appear that the commission or continuance of some act during the litigation, would produce great, or irreparable injury to the plaintiff, or when it shall appear, that the defendant is doing, or threatens, or is about to do, or is procuring, or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

30th The injunction may be granted at the time of issuing the summons, or at any time afterwards, before judgment is rendered in the actions before issuing which, however, the Court shall require (except when the People of the United States of America are a party plaintiff) a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to the effect that the plaintiff will pay to the party enjoined, such damages, not exceeding an amount to be specified, as such party may sustain by reason of the injunction, if the Court shall finally decide that the Plaintiff was not entitled thereto.

31st The party against whom an injunction is granted, may upon notice to the opposite party, move the Court that it be dissolved, or modified, and upon the hearing, the Court may consider the application solely upon the pleadings on file, or may allow the parties respectively to file affidavits, and if it satisfactorily appears, that there is not sufficient grounds for an injunction, it shall be dissolved, or it may be modified, if it appears that the extent of the writ granted, is too great.

Attachment

32^d The plaintiff at the time of the issuance of summons, or at any time afterwards, may have the property of the defendant attached, as security for the satisfaction of any judgment that may be recovered, unless, the defendant give security to pay such judgment as hereinafter provided in the following Cases.

1st In an action upon a contract express, or implied, for the direct payment of money, which contract is not secured by a mortgage, lien, or pledge upon real, or personal property, or if so secured, that such security has been rendered nugatory by the act of the defendant.

2^d In an action upon a contract, express, or implied, against a defendant not residing in this Empire.

33^d The Court shall issue the writ of attachment upon receiving an affidavit, by or on behalf of the plaintiff, which shall be filed showing;

1st That the defendant is indebted to the plaintiff, (Specifying the amount of such indebtedness over and above all legal set offs or counter claims) upon a contract express, or implied, for the direct payment of money, and that the payment of the same has not been secured, by any mortgage, lien, or pledge upon real, or personal property; or,

2nd That the defendant is indebted to the plaintiff, (Specifying the amount) over and above all legal set offs, or counter claims, and that the defendant is a non-resident of this Empire; and

3rd That the sum for which the attachment is asked, is an actual, Bona fide, existing debt, due and owing from the defendant, to the plaintiff.

34th Before issuing the writ, the court shall require a written undertaking on the part of the plaintiff, in a sum not less than one half of, nor exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect, that if

the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain, by reason of the attachment, not exceeding the sum specified in said undertaking

35th The writ shall be directed to the Marshal of the Consulate within the jurisdiction of which the property of such defendant may be, and require him to attach, and safely keep, all the property of such defendant within said consular jurisdiction, not exempt ^{from} execution, or so much thereof, as may be sufficient to satisfy the plaintiff's demand, (the amount of which shall be stated as in the Complaint in the action) unless, the defendant give him security, by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand besides costs, or in an amount equal to the value of the property which has been, or is about to be attached; in which case, to take such understanding. Several writs may be issued at the same time, to different Marshals, at different Consulates.

36th The rights, or shares which the defendant may have in the stock of any corporation, or company, together with the interest, and profits thereon and all debts due such defendant, ^{and all other property in the hands of such Defendant,} not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

37th The Marshal to whom the writ is directed and delivered, shall execute the same without delay, and if the undertaking

(35)
mentioned in section ⁽³⁵⁾ be not given, as follows;

1st Real property, ^{or} any interest in, or right of possession ^{therein}, of which the defendant may be the owner, and in the possession, by leaving a copy of the writ with ^{the} occupant thereof, or if there be no occupant, by posting a copy of the writ in a conspicuous place thereon, and filing a copy, together with a description of the property attached, with the U.S. Consul at that port. If the same shall not be in the possession of the defendant, but in that of some other person, the same shall be attached by leaving with such person, or his agent, a copy of the writ, and a notice, that such real property, (giving a description thereof) and any interest therein, belonging to the defendant is attached, pursuant to such writ; and posting a copy of said writ, and notice in a conspicuous place on said property, and filing a copy of such notice, and writ with the U. S. Consul for that jurisdiction;

2^d Personal property, capable of manual delivery, shall be attached by taking it into custody;

3rd Stock, or shares, or interest in stock, or shares of any corporation, or company, shall be attached, by leaving with the President, Secretary, Cashier, or other managing agent thereof, a copy of the writ, and a notice, stating that the stock, or interest of the defendant, is attached in pursuance of such writ;

4th Debts, and credits, and other personal property, not capable of manual delivery, shall be attached, by leaving with the person owing such debts, or having in his possession, or under his control, such credits, or other personal property, or with his agent, a copy of the writ, and a notice, that the debts,

owing by him to the defendant on the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

38th Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession, or under his control, any credits, or other personal property belonging to the defendant, or is owing any debt to the defendant, the Marshal, shall serve upon such person, a copy of the writ, and a notice, that such credits, or other property, or debts, as the case may be, are attached, in pursuance of such writ.

39th All persons having in their possession, or under their control, any credits, or personal property belonging to the defendant, or owing any debts, to the defendant at the time of service upon them of a copy of the writ, and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the Marshal, liable to the plaintiff, for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

40th Any person (a Citizen of the United States) owing debts to the defendant, or having in his possession, or under his control, any credits, or other personal property belonging to the defendant, may be required to attend before the Court, and be examined on oath respecting the same. The defendant may also be required to attend, for the purpose

of giving information respecting his property, and may be examined on Oath. The Court, may after such examination, order personal property, capable of manual delivery, to be delivered to the Marshal, on such terms, as may be just having reference to any Liens thereon, or Claims against the same; and a memorandum to be given of all other personal property, containing the amount, and the description thereof.

41st The Marshal shall make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts, and Credits attached, he shall request, at the time of service, the party owing the debt, or having the Credit, to give him a memorandum, stating the amount, and description of each, and, if such memorandum be refused, he shall return the fact of the refusal, with the writ. The party refusing to give the memorandum, (if a Citizen of the United States) may be required to pay the costs of any proceedings, taken for the purpose of obtaining information respecting the Amounts, and descriptions, of such debt or Credit.

42^d If any property attached be perishable, the Marshal may sell the same, in the manner in which such property is sold on execution. The proceeds, and other property, attached by him, shall be retained by him, to answer any judgment that may be recovered in the action, unless, ^{Somer} subjected to execution upon another judgment, recovered.

attachment, Debt, and Credits attached,
by him, if the same can be done without suit.
The Marshal's receipt, shall be a sufficient discharge for the
amount paid.

43^d If any personal property attached, be claimed by a third
person as his property, the Marshal shall notify the plaintiff,
or his attorney, of the amount, value, and nature thereof; and by
whom claimed, and if within two days after such notice is given,
the plaintiff fails to indemnify the Marshal, by giving him a
good and sufficient ^{bond in double the value thereof with two sufficient} ~~sureties~~ against cost, or loss; that he may
be put to, by holding the same, as the property of the defendant;
he may release the same, to the said claimant, reciting what
he has done, relative thereto, in his return, upon the original writ.

44th If the plaintiff recovers a judgment, the Marshal shall
satisfy the same out of the property attached by him, which has
not been delivered to the defendant, or claimant, as herein
before provided, or subjected to execution, on another judgment,
recorded previous to the issuing of the attachment, if it be
sufficient for that purpose.

1st By paying to the plaintiff, the proceeds of all sales of
perishable property sold by him, or of any debt, or Credits
collected by him, or so much as shall be necessary to
satisfy the Judgment.

2nd If any balance remain due, and an execution shall
have been issued on the judgment, he shall sell under
the execution, so much of the property, real, or personal,

as may be necessary to satisfy the balance, if enough for that purpose remains in his hands. Notices of the sale, shall be given, and the sale conducted as in other cases of sales on Executions.

45th If after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debt, or credits collected by him, deducting his fees, to the payment of the judgment, any balance shall remain due, the Marshal shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the Marshal upon reasonable demand shall deliver over to the defendant, the attached property, remaining in his hands, and any proceeds of the property attached, unapplied on the judgment.

46th If the execution remain unsatisfied, in whole, or in part, the plaintiff may prosecute any undertaking given by the defendant, pursuant to this chapter, of this decree; or he may proceed, as in other cases, upon the return of an execution.

47th If the defendant recover judgment against the plaintiff, any undertaking received in the action; all of the proceeds of sales, and money, collected by the Marshal, and all of the property attached remaining in the Marshal's hands, shall be delivered to the defendant, or his agent; the order of attachment shall be discharged and the property released therefrom

148th Whenever the defendant shall have appeared in the action, he may upon reasonable notice to the plaintiff, apply to the Court, in which the action is pending, for an order, to discharge the attachment, wholly, or in part, and upon the execution of the undertaking mentioned in the next section, such order may be granted, releasing from the operation of the attachment, any, or all of the property attached, and all of the property so released, and all the proceeds of the sales thereof, ^{shall} be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the Plaintiff.

149th Before granting such order the Court shall require an undertaking on behalf of the defendant, by at least two sureties, American Citizens, residents of Japan, to the effect, that in case the Plaintiff recover ~~the~~ judgment in the action, defendant will on demand, re-deliver such property attached, so released, to the proper officer, to be applied to the payment of the judgment, and that in default thereof, the defendant, and sureties, will on demand pay to the Plaintiff, the full value of the property so released. The Court granting such release, shall fix the sum for which the undertaking shall be given, and if necessary in fixing the sum, to know the value of the property released, the same may be appraised, by three disinterested persons, appointed for the purpose. The sureties may be required to justify, before the Court, and the property attached, shall not be released from the attachment, without their justification, if the same be required.

50th The defendant may also at any time, before the time for answering expires, apply on motion, upon reasonable notice to the plaintiff, to the Court in which the action is brought, that the attachment be discharged, on the ground, that the writ, was improperly, or irregularly issued.

51st When the motion is made upon affidavit on the part of the defendant, but not otherwise, the plaintiff, may oppose the same, by affidavits, or other evidence, in addition to ~~those~~ on which the attachment was made. If upon such application it shall satisfactorily appear, that ^{the} writ of attachment was improperly, or irregularly issued, it shall be discharged.

52^d The Marshal shall return the writ of attachment, with the summons, if issued at the same time, unless the Court otherwise directs; in all other cases within twenty, 20, days of its issuance, and receipt by him, with a certificate of his proceedings endorsed thereon.

Deposit in Court

53^d When it is admitted by the pleading, or examination of a party, that he has in his possession, or under his control, any money, or other thing, capable of delivery, which being the subject of the litigation, is held by him as trustee for another party, or which belongs, or is due to an other party, the Court may order the same, upon motion, to be deposited in Court, or delivered to such party, upon such conditions, as

may be just, subject to the further directions of the Court.

54th A Receiver may be appointed by the Court in which an action is pending;

1st Before Judgment, provisionally, on the application of either party, when he established a *prima facie* right, to the property, or to an interest in the property, which is the subject of the action, and which is in the possession of an adverse party, and the property, or its rents, and profits, are in danger, of being lost, or materially injured, or impaired;

2^d After judgment, to dispose of the property, according to the judgment, or to preserve it, during the pendency of an appeal, ^{and}

3^d In such ^{other} cases, as an in accordance with the practice, of Courts of Equity Jurisdiction.

Of Trial and Judgment.

55th A Judgment is the final determination of the rights of the parties in the action or proceeding.

56th Judgment may be given for or against one, or more of several plaintiffs, or defendants, and it may, when the justice of the case requires it, determine the ultimate rights of the parties, on each side as between themselves.

57th In an action against several defendants, the Court may, in its discretion, render judgment, against one or more of them, leaving the action, to proceed against the others, whenever a several judgment

is proper.

58th The relief granted to the plaintiff, if there be no answer, shall not exceed that, which he shall have demanded in his complaint; but in any other case, the court, may grant him any relief consistent with the case, made by the complaint, and embraced within the issue.

59th An action may be dismissed, or a judgment of non suit entered, in the following cases;

1st By plaintiff himself at any time before trial, upon the payment of costs, if a counter claim has not been made; If a provisional remedy has been allowed, the undertaking shall thereupon be delivered by the clerk, to the defendant, who may have his action thereon;

2^d By either party upon the written consent of the other;

3^d By the Court when the plaintiff fails to appear, on the trial, and the defendant appears, and asks for the dismissal;

4th By the Court when upon trial, and before the final submission of the case, the plaintiff abandons it;

5th By the Court, upon motion of the defendant, when upon the trial, the plaintiff fails to prove a sufficient case. & judgment of dismissal, shall in all cases be entered in the Court's docket, and judgment book.

60th In all other cases judgment shall be rendered upon the merits.

61st Judgment may be had if the defendant fail to answer the Complaint as follows.

*

1st The Court in any action, if an answer has been filed with it within the time specified in the summons, or within such further time as may have been granted upon application of the plaintiff or his attorney shall enter the default of the defendant, and immediately thereupon enter judgment.

3^d In actions where the service of summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the Court, ~~shall~~ shall thereupon require proof, to be made of the demand, mentioned in the complaint; and if the defendant, be not a resident of the Empire, shall require the plaintiff, or his agent, to be examined on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, ^{and} may render judgment, for the amount which he is entitled to recover

Of Issues and the Manner of their disposition

62^d An issue arises, when a fact, or conclusion of law, is maintained by one party, and is controverted by the other, and ^{are} of two kinds, to wit, of law and of fact. An issue of law, arises upon a demur, to the Complaint, or answer, or, to some part thereof. An issue of fact arises, when a material allegation in either the Complaint or Answer, is controverted.

~~the plaintiff, or his attorney,~~
* But, before entering judgment in the case, the Court, shall require proof to be made, by the plaintiff, and shall enter such judgment only, as the evidence, under the pleadings, will justify, and when the amount demanded, in such a case, exceeds the sum of Five Hundred dollars, Assessors shall be selected, and participate in the judgment, as in other cases:

3^d In actions where the service of summons was by publication, the plaintiff, upon the expiration of the time designated in the order of publication, may, upon proof of the publication, and that no answer has been filed, apply for judgment; and the Court, shall there upon require proof, to be made of the demand, mentioned in the complaint; and if the defendant, be not a resident of the Empire, shall require the plaintiff, or his agent, to be examined on oath, respecting any payments that have been made to the plaintiff, or to any one for his use, on account of such demand, ^{and} may render judgment, for the amount which he is entitled to recover

Of Issues and the Manner of their disposition

62^d An issue arises, when a fact, or conclusion of law, is maintained by one party, and is controverted by the other, and ^{are} of two kinds, to wit, of law and of fact. An issue of law, arises upon a demand, to the Complaint, or answer, or, to some part thereof.

An issue of fact arises, when a material allegation in either the Complaint or Answer, is controverted.

63^d Issues of law shall be tried and disposed of by the Court, ^{in the same manner, or by law it should be constituted,} constituted, to try and dispose of the issuable facts in the same case, and when there are issues of law and fact in the same case, the issue of law, shall be first disposed of.

64th All cases shall be entered by the Court upon its trial Calendar, according to the date of issue, and trial, and disposed of, according to their respective order of precedence; unless for good cause, such disposition shall be postponed, by order of the Court, in writing, entered in its journal, assigning the reason for the delay.

65th A motion to postpone a trial, on the ground of the absence of evidence, shall only be made upon affidavit, showing the materiality of the evidence, expected to be obtained, and that due diligence has been used to procure it; setting forth specifically, what acts such diligence consists of. The Court may also require the moving party, to state upon affidavit, the evidence which he expects to obtain; and if the adverse party there upon admits, that such evidence would be given, and that it be considered as actually given on the trial, or offered, and overruled as improper, the trial shall not be postponed.

Trial with Assessors

66th When the action is called for trial by the Court, ~~and~~ assisted by Assessors, The Counsel, or his clerk, shall prepare

Separate ballots containing the names of all the persons, who have been nominated by such Council, to serve as Assessors, and whose nomination has been approved by the Minister, and deposit them in a box. He shall then in the presence of the parties present, draw from the box, the number of tickets that the law enjoins, that there shall be Assessors, to aid him upon the trial; and the persons whose names are thereon, shall, by the Marshal, be summoned forthwith to appear, and act as such assessors.

If the persons whose names are so drawn, are temporarily absent from the port when the Court is sitting, or if ^{any} such person be too unwell, to serve, to be proven by a physicians Certificate to that effect, or if the Marshal returns upon the summons, that such person after diligent search can not be found, or if such person be challenged, as herein after provided, and such ~~person~~ challenge be allowed; the Council shall proceed in a similar manner, to draw other names from the box, which persons whose names are so drawn, the Marshal shall proceed to summon, in the same manner, until the Court shall be organized, as by law direct.

6th When the persons thus summons shall appear, they shall be sworn by the Council, to truthfully answer such questions as may be put to them, in relation to their eligibility to serve as Assessors in that action; after which they may be examined relative thereto, by the respective parties or their Counsel; and when the formation of the board of assessors is completed, they shall be sworn by the Council, to well and truly try, and the verdict therein pending, wherein — is plaintiff, and — is defendant, and a true judgment, therein to render, according

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their best belief.

68th Either party to the action, may challenge any person selected, to act as an assessor, when it appears from his examination or otherwise:

1st That he is related to any of the parties in the action, by either the ties of consanguinity, or affinity, within the third degree:

2^d That he holds the relation of Guardian, or ward, Master, or servant, Employer, or clerk, or principal, or agent, to either party, or that he is a member of the family of either party, or a partner in business with either party, or that he is a surety on any undertaking in the action for either party:

3^d That he has served as an assessor, or been a witness, on a previous trial, between the same parties, for the same cause of action;

4th That he is interested in the event of the action, or that he has formed, or expressed, an unqualified opinion, or belief, as to the merits of the same; or,

5th That he entertains such an enmity against, or bias to, either of the parties to the action, as would influence his mind, in forming his judgment in the action: and,

When the challenge is sustained by sufficient evidence, the Consul shall allow the same, discharge the person, and proceed to select an other.

69th If after the organization of the Court with Assessors, one of the Assessors become sick, he shall be discharged; a new selection made as herein before provided, and the trial of the Cause shall commence anew.

70th A Comusar Court sitting with assessors, shall in all cases render a judgment in writing, signed by the Censur, and the Assessors; if they agree with him in his judgment; but if either of them dissent, he shall express such dissent, with his reasons therefor, in writing, duly signed, and such dissenting opinion of said Assessor, shall by the Censur, or his Clerk, be filed, and entered in the judgment book, with the judgment in the Case.

71th A minute book shall be kept by the Comusar Court, in which shall be entered the Opinions, and Judgment, in each case, immediately after being received, and placed on file; also in said book shall be entered, the names of the persons called as Assessors, with a note of the action of the Censur relative thereto, on any challenge being made by either party; the names of all witnesses called and sworn on the trial, and the date of the rendition of the judgment.

Exceptions

72^d An exception, is an objection taken at the trial, to a decision upon a matter of law, at any time, from the time of the calling of the action for trial until the time of rendition of the Judgment therein; and ^{may} be made in writing at the time, or entered by the Censur, or the Clerk of his Court, in the Minute book thereof; but no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

73^d If the Court, or the Censur, in any case refuse to allow an exception to be filed; or fail, or refuse, to enter the same in the

Minute book of the Court, in accordance with the facts, any party aggrieved thereby, may petition the Ministerial Court, or other appellate Court having jurisdiction ^{on notice to the opposite party,} for leave to prove the same, and shall have the right so to do, in such manner as said Court may by rule direct.

74th No particular form of exception shall be required. The objection shall be stated with so much of the evidence, or other matter, as is necessary to explain it, but no more; and as briefly as possible.

75th The final judgment of the Court, in an action, shall be deemed in all cases to be excepted to by the party against whom the same is rendered, without any especial notice, that an Exception is taken thereto.

New Trials

76th The judgment rendered in an action, may be vacated and a new trial granted, on the application of the party aggrieved; for any of the following causes materially affecting the substantial rights of said party:

1st Irregularity in the proceedings of the Court, or any order of the Court, or abuse of discretion, by which either party, was prevented from having a fair trial:

2^d Accident, or surprise, which ordinary prudence could not have guarded against:

3^d Newly discovered evidence, material for the party making

the application, which he could not, with reasonable diligence, have discovered, and produced at the trial;

4th Excessive damages, appearing to have been given, under the influence of passion, or prejudice:

5th Inefficiency of the evidence, to justify the judgment, or other decision, or that it is against law:

6th Error in law occurring at the trial, and excepted to by the party making the Application.

77th When the Application is made for a cause mentioned in the First, Second, and Third subdivisions, of the last section, it shall be made upon an Affidavit; for any other cause, it shall be made upon a statement, prepared, as provided in the next section.

78th The party intending to move for a New trial, shall give written notice of the same as follows: When the Action has been tried by a Court, sitting with Assessors, within five days after the rendition of the Judgment; and within two days after Judgment, when tried by the Court alone. The notice shall designate generally, the grounds upon which the motion will be made. Within five days after giving such notice, or within such further time, not exceeding twenty days, as the Court may by order grant, the said party shall file with the Court, the Affidavit, or statement, required by the last section. If no affidavit, or statement, be filed within five days after the notice, or within such further time, as the parties may agree upon, or the Court may by order grant, the right to move for a New trial, shall ^{be} denied, ^{file} waived. — When

the notice designates as the grounds upon which the motion will be made, the insufficiency of the evidence, to justify the judgment, or other decision, the statement, shall specify the particular errors, upon which the party will reply. When the notice designates as the ground of the motion, errors in law, occurring at the trial, and excepted to by the moving party, the statement shall specify the particular errors, upon which ^{the party will} reply. If no such specifications be made, the statement may be ~~disregarded~~. The statement shall contain so much of the evidence, or reference thereto, as may be necessary to explain the particular points therein specified, and no more. Such statement, when not agreed to by the parties, shall be settled by the judge of the Court upon notice. When agreed to, it shall be accompanied by the certificate of the parties, or their attorneys; that the same has been agreed upon, and is correct. When settled by the judge, the same shall be accompanied with his certificate, that the same has been allowed by him, and is correct. On the ~~argument~~, reference may also be made to the pleadings, depositions, and documentary evidence on file, and the minutes of the Court. If the application be made upon affidavits filed, the adverse party may use counter Affidavits on the hearing. Any counter Affidavits, shall be filed with the Court, one day at least before the hearing. The affidavits, and counter Affidavits, and the statement thus used in connection with such pleadings, depositions, and minutes of the Court, as are read, or referred to on the hearing, shall constitute without further statement, the papers to be used on any appeal, that may properly be made, from the order, granting, or refusing the New trial. Such affidavits, depositions, and such portions of the minutes of the

court as are referred to, maybe designated, be indorsed by the Judge of the Court, as having been read on the hearing of the motion, and referred to in his certificate. The application for a New trial, shall be heard by the Court, at the earliest practicable period, after the filing of the Affidavits, or statement; and the decision of the Court thereon, shall be in writing, stating the grounds upon which the same is granted, or refused.

79th The judgment of the Court shall be entered within twenty four hours after the trial is concluded, unless the Court, order the case to be ^{reserved} ~~referred~~ for argument, or further consideration, or grant a stay of proceedings.

80th If a counterclaim established at the trial, exceeds the plaintiff's demand, so established; judgment for the defendant shall be given for the excess; or if it appears, that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

81st In an Action to recover the possession of personal property, Judgment for the plaintiff may be, for the possession, or the value thereof, in case a delivery can not be had; and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claim a return thereof; Judgment for the defendant may be, for the return of the property, or the value thereof, in case a return can not be had; and damages for taking, and withholding the same.

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82^d The Court shall keep amongst its records, a book, for the

of judgment, to be called, the "Judgment Book"; in which such judgments, shall be entered, and shall specify clearly, the relief granted, or other determination of the action.

83^d If a party die after verdict, or decision, upon any issue of fact, and before judgment, the Court may nevertheless render judgment thereon.

84th Immediately after entering the judgment, the Court shall have the following papers attached together, and filed, which, shall constitute the Judgment roll.

1st In case the Complaint be not answered by any defendant, the summons, with the affidavit, or proof of service, and the Complaint, with a memorandum, endorsed thereon, that the default of the defendant in not answering, was entered, and a copy of the judgment:

2^d In all other cases, the summons, pleadings, findings, or opinions of the Court; or any of its Assessors; all bills of exceptions, taken, and filed in said Action; copies of orders, sustaining, or overruling demurrers; a copy of the judgment, and copies of any orders relating to a change of parties.

85th The Court shall keep a book to be called the "Docket Book," with each page divided into eight columns, and headed as follows; Judgment Debtors, Judgment Creditors, Judgment, time of entry, when entered, in Judgment books, Appeals when taken, Judgment of Appellate Court, satisfaction of Judgment, when entered. The names of the defendants shall

in alphabetical order.

86th ^{Book,} The docket, shall be open at all times during office hours, for the inspection of the Public without charge.

87th Satisfaction of a Judgment may be entered in the docket book, upon an execution returned satisfied, or, upon an acknowledgment of satisfaction, filed with the Court, by the Judgment creditor, or within one year after the judgment was rendered, by the attorney of record, of the party, unless a revocation of his authority be previously filed. Whenever a Judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party, or his attorney, to give such acknowledgment, and upon motion, the Court may compel it, or may order the entry of satisfaction to be made without it.

The Execution

88th The party in whose favor judgment is given, may at any time within five years after the entry thereof; have, issued for its enforcement, a writ of execution, as herein after provided.

89th The writ shall be issued in the name of the People of the United States of America, sealed, with the seal of the Court, and shall be directed to the Marshal, and shall intelligibly refer to the judgment, stating the court where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon; and shall require the Marshal substantially as follows:

1st If it be against the property of the judgment debtor, it shall require the Marshal to satisfy the judgment with interest, out of the personal property of such debtor, and, if sufficient ^{personal} ~~personal~~ cannot be found, then out of his real property:

2^d If it be against real, or personal property, in the hands of the personal representatives, heirs, devisees, legatus, ^{or} tenants of real property, or trustees; it shall require the Marshal to satisfy the judgment, with interest out of such property:

3^d If it be against the person of the judgment debtor, it shall require the Marshal to arrest such debtor, and commit him to jail, until he pay the judgment with interest, or be discharged according to law:

4th If it be for the delivery of real, or personal property, it shall require the Marshal to deliver the possession of the same, particularly describing it, to the party entitled thereto; and may at the same time require the Marshal, to satisfy any costs, damages, rents, or profits, recovered by the same judgment, out of the personal property of the person against whom it was rendered; and the value of the property, to be specified therein, if a delivery thereof can not be had; and if sufficient personal property can not be found, then out of the real property, as provided in the first subdivision of this section.

90th When a writ of execution is issued on a judgment, recovered against two or more persons, in an action upon a joint contract, in which all the defendants were not served with summons, it shall direct the Marshal, to satisfy the judgment, out of the joint property of all the defendants,

and the individual property only, of the defendants who were served.

91st The execution may be made returnable at any time, not less than ten, or more than sixty days after its — receipt by the Marshal; to the Court where the judgment roll is filed.

92^d When the judgment requires the payment of money, or the delivery of real or personal property, the same may be enforced by a writ of execution; when it requires the performance of any other act, a certified copy of the Judgment may be served on the party, against whom the same is rendered, or upon the person, or Officer required thereby, or by law to obey the same. Obedience thereto may be enforced, by the Court, and after a final Judgment of partition, the Court shall ^{have} power, to enforce a severance of the possession.

93^d In all cases, other than for the recovery of money, the Judgment may be enforced after five Years, from the date of its entry, by an order of the Court, upon application therefor.

94th Notwithstanding the death of a party, after the Judgment, execution thereon may be issued. In case of the death of the Plaintiff, the same as if he were living, upon the application of his Executor, or administrator, or successor in interest, by the Court in which the judgment was rendered, or exists. And in case, of

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the decease of the Defendant, if the judgment be for the recovery of real, or personal property; execution may be issued, and executed against the property recovered, in the same manner, and with the same effect, as if he were still living.

95th When the execution is against the property of the judgment debtor, it may be issued to the Marshal of any Consulate in the Empire. When it requires the delivery of real or personal property, it shall be issued to the Marshal of the Consulate where the property, or some part thereof is situated. Executions may be issued at the same time to different Consulates.

96th All goods, chattles, monies, and other property, both real, or personal, or any interest therein of the Judgment debtor, not exempt by decree, or law, ^{from Execution,} and all property, and rights of property, seized, and held, under attachment in the same action, shall be liable to execution. Shares, and interests in any corporation, or Company, and debts, and Credits on all other property, both real, or personal, or any interest, in either real, or personal property, and all other property, not capable of manual delivery, may be attached, on execution, in like manner, as upon writs of attachment. Until a levy, property shall not be effected by Execution, or attachment.

97th If the property levied on be claimed by a third person, as his property, the Marshal shall notify the person in whose favor the execution is issued of such claim; by whom it is

perfected, and what the value of the same is, and as a Condition precedent to holding the same under execution, that he may require the execution creditor, to execute to him, a good and sufficient bond of indemnity, in double the value of the said property, conditioned to save him the Marshal, harmless, if he shall hold, and sell the said property, under the execution; and if said indemnity Bond shall not be given, within two days after the service of such notice, the Marshal may release the said property, to the claimant; making return of the notice, of the claim, and his proceedings thereupon, to the Court that issued the execution.

98th The following property shall be exempt from execution to wit:

1st Chairs, tables, desks, and books to the value of one hundred dollars, belonging to the judgment debtor;

2^d Necessary household, kitchen, and table furniture belonging to the judgment debtor; including Stove, Stove pipe, and stove furniture; wearing apparel, beds, bedding, and bedsteads, and provisions actually provided for individual, or family use; sufficient for one month; ^{Whichever Dollar and} not exceeding, in value, the sum of Six,

3^d Tools, or implements of a Mechanic, or artisan, necessary to carry on his trade; the instruments, and chests, of a Surgeon, Physician, Surveyor, and Dentist; necessary to the exercise of their profession; with their scientific, and professional libraries; the law libraries of Attorneys, and Counsellors; and the libraries of Ministers of the Gospel.

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99th The Marshal shall execute the writ against the—

property of the Judgment debtor, by levying, on a sufficient amount of property, if there be sufficient: collecting, or selling the things in action, and selling the other property, and paying to the Plaintiff, or his attorney, so much of the proceeds, as will satisfy the Judgment, or depositing the amount, with the Court; any excess in the proceeds, over the Judgment, and the Marshalls fees, shall be returned to the Judgment debtor. When there is more property of the Judgment debtor, than is sufficient to satisfy the Judgment, and Marshalls fees; within view of the Marshall, he shall levy on such part only of the property, as the Judgment debtor may indicate, provided that the Judgment debtor, be present at, and indicate at the time of the levy such part.

100th Before the sale of property on execution, notice thereof shall be given as follows:

1st In case of ~~perishable~~ ^{or printed} property, by posting written notices, of the time, and place of sale, in three public places, of the port, or City where the sale is to take place; for a such a time, as may be deemed reasonable, considering the character, and condition of the property:

2^d - In case of other personal property, by posting a similar notice, in three public places in the port, or City, where the same is to take place; and publishing, a copy of the same, in some Newspaper, published in the place, (if there be one published there) not less than five, ~~nor~~ more than ten days successively:

3^d In case of ^{of} real property, by posting a similar notice, (particularly describing the property) for twenty days successively, in three public places, in the port, or City, where the property is situated,

and publishing a copy thereof, once a week, for the ~~same~~ period,
in some Newspaper, published at the port, or city, if there be one.

101st An Officer selling without the notice prescribed by the
last section, shall forfeit Five hundred dollars to the aggrieved
party, in addition to his actual damage; and the wilful taking
down, or defacing of such a notice, before the sale, or satisfaction
of the judgment, shall be a misdemeanor, punishable, as such,
by either fine, or imprisonment, or both.

102^d All sales of property under execution, shall be made at
Auction, to the highest bidder; and shall be made, between the
hours of ten in the morning and five in the afternoon; and
after sufficient property has been sold, to satisfy the execution,
no more shall be sold. Neither the officer holding the execution,
nor his deputy, shall become a purchaser, or be interested in
any purchase at such sale. When the sale is of personal
property, capable of manual delivery, it shall be within
view of those who attend the sale, and be sold in such parcels,
as are likely to bring the highest price. And when the sale is
of real property, and consisting of several known lots, or parcels,
they shall be sold separately, or, when a portion of such real
property, is claimed by a third person, and he requires it to be
sold separately, such portion shall thus be sold. The
Judgment debtor, if present at the sale, may also direct
the order in which property, real, or personal shall be sold;
when such property, consists of several known lots, or
parcels, or of articles, which can be sold to advantage,

separately; and the Marshal, shall be bound to follow such directions,

103^d If the purchaser refuses to pay the amount bid by him, for property struck off to him, at a sale under execution, the Officer may - again sell the property, at any time to the highest bidder, and if any loss be occasioned thereby, the Officer may sue such person, (if a citizen of the United States) and recover the amount of such loss, with costs, in the Consular Court, of the Port, or City, where such sale was held; and the same proceedings, may be had against any American Citizen, who, brings a subsequent purchaser, who shall refuse, to pay the price bidden by him, for an article struck off to him; and the Officer, may in his discretion, thereafter reject the bid of any person so refusing.

104th The two preceding sections, shall not be construed to make the Officer liable, for any more than the amount bid by the second, or subsequent purchaser; and the amount collected from the purchaser, refusing to pay.

105th When the purchaser of any personal property, capable of manual delivery, shall pay the purchase money, the Officer making the sale, shall deliver to the purchaser, the property; and if desired, shall execute and deliver to him, a certificate of the sale, and payment. Such certificate, shall convey to the purchaser, all the right, title, and interest, which the debtor, had in, and to such property, on the day the execution was levied.

106th When the purchaser of any personal property, not capable

of manual delivery, shall pay the purchase money, the officer making the sale, shall execute, and deliver to the purchaser, a Certificate of sale, and payment. Such certificate, shall convey to the purchaser, all right, title, and interest, which the debtor, had in, and to such property, on the ^{day, the} execution was levied.

107th Upon a sale of real property, the purchaser shall be substituted to, and acquire all the right, title, interest, and claim, of the Judgment debtor, thereto; and when the estate, is less than a leasehold of two years, the sale shall be absolute. In all other cases, the property shall be subject to redemption, as provided, in this chapter. The officer, shall give to the purchaser, a certificate of sale, containing;

First - A particular description of the real property sold;

Second - The price bid for each distinct lot or parcel;

Third - The whole price paid; and,

Fourth - When subject to redemption, it shall be so stated.

108th Property, sold subject to redemption, as provided in the last section; or any part sold separately, may be redeemed, in the manner herein after provided, by the following persons, or their successors in interest:

1st The Judgment debtor, or his successor in interest, in the whole or any part of the property;

2^d A creditor, having a lien by judgment, or mortgage, on the property sold, or on some share, or part thereof, subsequent to that, on which the property was sold. The persons, mentioned in the second subdivision of this section, are termed redemptioners.

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109th The Judgment debtor, or redemptioner, may redeem the property, from the purchaser, within six months after the sale, on paying the purchaser, the amount of his purchase, with Twelve per-cent, thereon, in addition, together with the amount, of any land rental, which the purchaser may have paid thereon, to the Japanese Government after the purchase, and interest on such amount; and if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the Judgment, under which such purchase was made, the amount of such lien, and interest thereon.

110th If the property be so redeemed by a redemptioner, either the Judgment debtor, or other redemptioner, may, within sixty days after the last redemption, again redeem it, from the last redemptioner, on paying the sum paid, on such last redemption, with four per-cent thereon in addition, and the amount of any land rental, which the said last redemptioner, may have paid thereon to the Japanese Government, with interest on such amount; as also the amount of any liens, held by the last said redemptioner, prior to his own, with interest; provided, that the Judgment under which the the property was sold, ~~shall~~ not be so paid as a lien. The property may be again, and as often as the debtor, or redemptioner is so disposed, redeemed from any previous redemptioner, within Sixty days after the last redemption, with four per-cent thereon in addition, and the amount of any Government land rental, which the last previous redemptioner, paid after the redemption by him, with interest thereon; and the amount of any liens, other than the Judgment, under which the property was sold, held by the last said redemptioner, previous to his own, with

interest. Notice of redemption, shall be given to the Marshal. If no redemption be made within six months after the sale, the purchaser, or his assignee, shall be entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed, and no redemption has been made, and notice thereof been given, the time for redemption shall have expired; and the last redemptioner, or his assignee, ^{shall be entitled} to a Marshall's deed. If the debtor redeem, at any time before the time for redemption expires, the effect of the sale, shall be terminated; and he be restored to his estate. The payments mentioned in this, and the last preceding section; may be made to the purchaser, or to the redemptioner, as the case may be, or for him, to the Officer, who made the sale.

111th A redemptioner, shall produce to the Officer, or person, from whom he seeks to redeem, and serve, with his notice to the Marshal:

1st A copy of the Mortgage, or other lien, upon which he claims the right to redeem;

2^d A copy of any assignment, necessary to establish his claim, verified by his own, or a subscribing witness's Affidavit: and,

3^d His, or his agent's Affidavit, showing the amount ^{then} actually due on the lien.

112th Until the expiration of the time allowed for redemption, the Court may restrain the commission of waste, by an order to that effect, upon notice. — But it shall not be deemed waste, for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption; to continue to use it, in the same manner, in which it was

personally used, or in any other reasonable manner.

113th The purchaser, from the time of the sale, until a redemption, and a redemptor, from the time of his redemption, until an other redemption, shall be entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use, and occupation thereof.

114th If the purchaser of real property, sold on execution, or his successor in interest, ^{be} evicted therefrom, in consequence of irregularities in the proceedings concerning the sale, or of the reversal, or discharge of the judgment; he may recover the price paid, with interest, from the judgment creditor. If the purchaser of property, at a Marshal's sale, or his successor in interest, fail to recover possession, in consequence of irregularity, in the proceedings concerning the sale, or because the property sold, was not subject to execution, and sale, the Court, having jurisdiction thereof, shall on petition of such party, in interest, or his attorney, ~~revive~~ the original judgment, for the amount paid, by such purchaser, at the sale; with interest thereon, from the time of payment, at the same rate, that ^{the} original judgment bore, and when so ~~revived~~, the said judgment, shall have the same effect, as an original judgment, of the said Court, of that date; and bearing interest as aforesaid, and any other, or after acquired property, rents, issues, or profits of the said debtor, shall be liable to levy, and sale, under execution, in satisfaction of such debt; provided, that no property of such debtor, sold bona fide before the filing of such petition, shall be subject to the lien of said judgment. The said judgment, shall be revived, in the name

of the original party Plaintiff for the use of said petitioner and party in interest

Proceedings Supplementary to Execution

115th When an execution against property of the judgment debtor, or any one of several debtors, in the same Judgment, issued to the Marshal of the Port or City, at which he resides, or if he does not reside in this Empire, to the Marshal of the Consulate, where the judgment roll is filed, is returned, unsatisfied, in whole or in part; the judgment Creditor, at any time after such return is made, shall be entitled to an order, from the Consular Court, requiring such debtor, to appear, and answer, concerning his property, before such Court, at a time, and place, specified in the order; but no judgment debtor shall be required to attend before a Court, out of the Port, or City, in which he resides; when proceedings are taken under the provisions of this Chapter.

116th After the issue of an execution, against the property, and by proof by affidavit to the satisfaction of the Court; that any Judgment debtor has property, which he unjustly refuses to apply, towards the satisfaction of the Judgment; such Court, may by an order require said debtor, to appear at a specified time, and place, before such Court, to answer concerning the same; and such proceedings may then upon be had, for the application of the property of the Judgment debtor, towards the satisfaction of the Judgment, as are provided the return of an execution.

7. If it be made to appear to the Court by affidavits, that there is danger of the Judgment debtor absconding; the Court may order the Marshal, to arrest the debtor, and bring him before the Court; and upon his appearance, he may be ordered to enter into an undertaking, with sufficient surety, that he will attend from time to time before the Court, as shall be directed, during the pendency of proceedings, and until final determination thereof; and will not in the mean time, dispose of any portion of his property, not exempt from execution. In default of such undertaking, he may be committed to prison.

117th After the issuing of an execution against property, any person indebted to the Judgment debtor, may pay to the Marshal, the amount of his debt, or so much thereof, as may be necessary to satisfy the execution; And the Marshal's receipt, shall be a sufficient discharge for the amount so paid.

118th After the issuing, or return of an execution, against property of a Judgment debtor, or one of several debtors, in the same judgment, upon proof by affidavit, to the satisfaction of the Court, that any person, or Corporation has property, of such Judgment debtor; or is indebted to him in any amount exceeding fifty dollars, the Court may by order require such person, or a proper officer of such Corporation, American Citizens, to appear at a specified time before the Court, to answer concerning the same.

119th Witnesses may be required to appear, and testify

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before the Court, in any proceeding under this chapter, in the same manner, as upon the trial of an issue.

120th The Court may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or — other person, or due to the judgment debtor, to be applied to the satisfaction of the judgment.

121st If any person, party, or witness, disobey any order of the Court, properly made in the proceedings before him under this Chapter, he may be punished by the Court for a contempt

Foreclosing Mortgage

122^d There shall be but one action for the recovery of any debt, or the enforcement of any right, secured by mortgage upon real, or personal property; which action, shall be in accordance with the provisions of this Chapter. In actions for the foreclosure of Mortgages, the Court shall ^{have} power by its judgment, to direct a sale of the encumbered property, (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the Court, and the expenses of the sale, and amount due the Plaintiff; and if it appears from the Marshal's return, that the proceeds are insufficient, and a balance still remains due, judgment shall then be docketed for such balance, against the defendant, or defendants, personally liable for the debt; and shall then become a lien, on the real estate of such judgment debtor, as in other cases; on which executions may issue.

All persons having liens, or mortgage registered in the Consulate of the Port, or City where the property is situated; shall be joined in the action, and their respective rights thereto, shall all be determined, and settled in one action.

123^d If there be surplus money remaining, after the amount due, has been paid on the mortgage lien, or encumbrance, with costs; the Court may cause the same to be paid to the person entitled to it, and in the mean time, may direct it to be deposited in Court.

124th If the debt for which the mortgage lien, or encumbrance is held, be not all due; so soon as sufficient property, has been sold to pay the amount due, with costs, the sale shall cease; and afterwards, as often, as more becomes due, for principle, or interest, the Court may on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties; the whole may be ordered to be sold, in the first instance, and the entire debt, and costs paid; there being a rebate, of interest; when such rebate, is proper.

Appeals

125th

A judgment, or order in a civil action, except when expressly made final by a Statute of the United States, may be reviewed, as prescribed in this chapter, and not otherwise. The party appealing, shall be known as the Appellant, and the adverse party, as the respondent.

126th an appeal may be taken from a final judgment,

in an action, or special proceedings commenced in the Court in which the same is rendered; (When the same is not made final by law) within one year, after the rendition of Judgment:

2^d From an order, granting, or refusing a New trial; from an order, granting, or dissolving, or modifying, an injunction; from an order, dissolving, or refusing, to dissolve an attachment; from any special order, made after final Judgment, within sixty days, after such order is made, and entered in the minutes of the Court.

127th ~~The~~ The appeal shall be made, by filing with the Court, by whom the Judgment, or order appealed from, was rendered, a notice, stating the appeal from the same, or some specified part thereof, and serving a copy, of the notice, upon the adverse party, or his Attorney.

128th When the party, who has the right to appeal, wishes a statement of the case, to be annexed to the record of the Judgment, or order, he shall within twenty days, after the entry of such Judgment, or order, prepare such statement; which shall state specifically, the particular errors, or grounds upon which he intends to rely on the appeal; and shall contain so much of the evidence, as may be necessary, to explain the particular errors, or grounds specified, and no more; and shall serve a copy thereof, upon the adverse party. The Respondent, may within five days thereafter, prepare amendments, to the statement, and serve a copy on the Appellant. The statements, and amendments, which may be served, shall be presented to the Judge who tried or heard the Case, upon notice of two days, to the respondent; and a true statement, shall there upon be settled by the Judge. If no amendments,

are served, the statement may be presented to the Judge for settlement, without any notice to the respondent.

129th If the party ^{shall} omit to make a statement, within the time above limited, he shall be deemed to have waived his right thereto; and when a statement is made, and the parties shall omit, within the several times, above limited, the one party, to propose amendments, the other to notify an appearance before the Judge, they shall respectively be deemed, the former, to have agreed to the statement as prepared, and the latter, to have agreed to the amendments as proposed; but the Judge, who heard the case, shall notwithstanding, such admission, or implied agreement; have power to correct, any misstatements of facts, or of his rulings, which such statements, may contain.

130th The several periods of time, above limited, for preparing, or filing a statement, or amendments thereto, may be enlarged, upon good cause shown, by the Judge, before whom the case was tried.

131st The statement when settled by the Judge, shall be signed by him, with his certificate, that the same has been allowed, and is correct; when the statement is agreed upon by the parties, they, or their attorneys, shall sign the same, with their certificate, that it has been agreed upon by them, and is correct. In either case, when settled, or agreed upon, it shall be filed with the Court.

132^d A copy of the statement, shall be annexed to a copy of so much of the judgment-roll, as shall be included, in the

transcript on appeal, if the appeal, be from a judgment; if the appeal, be from an order, to a copy of such order.

133^d The provisions of the last five preceding sections, shall not apply, to appeals taken from an order, made upon affidavit filed; but such affidavit, shall be annexed to the order, in place of the Statement mentioned in those sections.

134th Upon an appeal from a judgment, the Court may revise any intermediate order, involving the merits, and necessarily affecting the judgment.

135th Upon an appeal from a judgment, or order, the Appellate Court, may reverse, affirm, or modify the judgment, or order appealed from; in the respect mentioned in the notice of appeal; and as to any, or all of the parties; or may set aside, or confirm, or modify, any, or all of the proceedings subsequent to, or dependant upon, such judgment, or order; and may if necessary, or proper, order a new trial. When the order, or judgment, is reversed, or modified; the Appellate Court, may make, complete restitution, of all property, and rights, lost by the erroneous judgment, or order; and when it appears to the Appellate Court, that the appeal was made for delay, it may add to the costs, such damages, as may be just.

136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

transcript on appeal, if the appeal, be from a judgment; if the appeal, be from an order, to a copy of such order.

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136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

transcript on appeal, if the appeal, be from a Judgment; if the appeal, be from an order, to a copy of such order.

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136th On an appeal from a final Judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the Judgment, and such

transcript on appeal, if the appeal, be from a Judgment; if the appeal, be from an order, to a copy of such order.

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136th On an appeal from a final Judgment, the appellant, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the Judgment, and such

transcript on appeal, if the appeal, be from a Judgment; if the appeal, be from an order, to a copy of such order.

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136th On an appeal from a final Judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the Judgment, and such

transcript on appeal, if the appeal, be from a Judgment; if the appeal, be from an order, to a copy of such order.

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transcript on appeal, if the appeal, be from a judgment; if the appeal, be from an order, to a copy of such order.

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136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

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136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

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133^d The provisions of the last four preceding sections, shall not apply, to appeals taken from an order, made upon affidavit filed; but such affidavit, shall be annexed to the order, in place of the Statement mentioned in those sections.

134th Upon an appeal from a judgment, the Court may revise, any intermediate order, involving the merits, and necessarily affecting, the judgment.

135th Upon an appeal from a judgment, or order, the Appellate Court, may reverse, affirm, or modify the judgment, or order appealed from; in the respect mentioned in the notice of appeal; and as to any, or all of the parties; or may set aside, or confirm, or modify, any, or all of the proceedings subsequent to, or dependant upon, such judgment, or order; and may if necessary, or proper, order a new trial. When the order, or judgment, is reversed, or modified; the Appellate Court, may make, complete restitution, of all property, and rights, lost by the erroneous judgment, or order; and when it appears to the Appellate Court, that the appeal was made for delay, it may add to the costs, such damages, as may be just.

136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

transcript on appeal, if the appeal, be from a judgment; if the appeal, be from an order, to a copy of such order.

133^d The provisions of the last five preceding sections, shall not apply, to appeals taken from an order, made upon affidavit filed; but such affidavit, shall be annexed to the order, in place of the Statement mentioned in those sections.

134th Upon an appeal from a judgment, the Court may review any intermediate order, involving the merits, and necessarily affecting the judgment.

135th Upon an appeal from a judgment, or order, the Appellate Court, may reverse, affirm, or modify the judgment, or order appealed from; in the respect mentioned in the notice of appeal; and as to any, or all of the parties; or may set aside, or confirm, or modify, any, or all of the proceedings subsequent to, or dependant upon, such judgment, or order; and may if necessary, or proper, order a new trial. When the order, or judgment, is reversed, or modified; the Appellate Court, may make, complete restitution, of all property, and rights, lost by the erroneous judgment, or order; and when it appears to the Appellate Court, that the appeal was made for delay, it may add to the costs, such damages, as may be just.

136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

transcript on appeal, if the appeal, be from a Judgment; if the appeal, be from an order, to a copy of such order.

133^d The provisions of the last five preceding sections, shall not apply, to appeals taken from an order, made upon affidavit filed; but such affidavit, shall be annexed to the order, in place of the Statement mentioned in those sections.

134th Upon an appeal from a Judgment, the Court may review, any intermediate order, involving the merits, and necessarily affecting, the Judgment.

135th Upon an appeal from a Judgment, or order, the Appellate Court, may reverse, affirm, or modify the Judgment, or order appealed from; in the respect mentioned in the notice of appeal; and as to any, or all of the parties; or may set aside, or confirm, or modify, any, or all of the proceedings subsequent to, or dependant upon, such Judgment, or order; and may if necessary, or proper, order a new trial. When the order, or Judgment, is reversed, or modified, the Appellate Court, may make, complete restitution, of all property, and rights, lost by the erroneous Judgment, or order; and when it appears to the Appellate Court, that the appeal was made for delay, it may add to the costs, such damages, as may be just.

136th On an appeal from a final Judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the Judgment, and such

transcript on appeal, if the appeal, be from a judgment; if the appeal, be from an order, to a copy of such order.

133^d The provisions of the last five preceding sections, shall not apply, to appeals taken from an order, made upon affidavit filed; but such affidavit, shall be annexed to the order, in place of the Statement mentioned in those sections.

134th Upon an appeal from a judgment, the Court may review any intermediate order, involving the merits, and necessarily affecting the Judgment.

135th Upon an appeal from a judgment, or order, the Appellate Court, may reverse, affirm, or modify the judgment, or order appealed from; in the respect mentioned in the notice of appeal; and as to any, or all of the parties; or may set aside, or confirm, or modify, any, or all of the proceedings subsequent to, or dependant upon, such judgment, or order; and may if necessary, or proper, order a new trial. When the order, or judgment, is reversed, or modified; the Appellate Court, may make, complete restitution, of all property, and rights lost by the erroneous judgment, or order; and when it appears to the Appellate Court, that the appeal was made for delay, it may add to the costs, such damages, as may be just.

136th On an appeal from a final judgment, the appellants, shall furnish the Court, with a transcript of the notice of appeal, the pleadings, or amended pleadings, as the case may be; which form the issues tried in the case; the judgment, and such

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other parts of the judgment roll, and no more, as are necessary to present, or explain the points relied on, and the statement, if there be one, certified by the attorneys of the parties, to the appeal, or by the court below, to be correct. On an appeal from an order, the appellants shall furnish the court, with a copy of the notice of appeal, the judgment, or order appealed from; and a copy of the papers, used on the hearing in the court below; such copies, to be certified, in like manner, to be correct. If any written opinion, be placed on file in rendering the judgment, or making the order in the court below, a copy shall be furnished. If the appellants fail to furnish the requisite papers, the appeal may be dismissed.

137th To render an appeal effectual for any purpose, in any case, a written undertaking shall be executed, on the part of the appellants; by at least two sureties, to the effect, that the appellants will pay all damages, and costs, which may be awarded against him, on the appeal, not exceeding three hundred dollars; or that sum, shall be deposited with the court, where the judgment, or order was entered; to abide the event of the appeal. Such undertaking, shall be filed, or such deposit made, within five days, after the notice of appeal is filed.

138th If the appeal be from a judgment, or order directing the payment of money, it shall not stay the execution of the judgment, or order, unless a written undertaking be executed, on the part of the appellants, by two, or more sureties, citizens of the United States, and residents of this Empire; to the effect, that they are bound in double the amount named in the judgment, or order, that if the judgment, or order appealed from, or any part thereof be affirmed; the

Appellant, shall pay the amount directed to be paid by the Judgment, or order, or the part of such amount, as to which the Judgment, or order shall be affirmed, ^(if affirmed) only in part, and all damages, and costs which shall be awarded against the appellant upon the appeal.

139th If the Judgment, or order appealed from, direct the assignment, or delivery of documents, or personal property, the execution of the Judgment, or order, shall not be stayed by appeal, unless the things required to ^{be} assigned, or delivered, be placed in the custody of such officer, or receiver, as the Court may appoint; or, unless an undertaking be entered into, on the part of the Appellant, with at least two sureties, and in such an amount, as the court may direct, to the effect, that the appellant will obey the order of the appellate court upon the appeal

140th If the Judgment, or order appealed from, direct the execution of a conveyance, or other instrument, the execution of the Judgment, or order, shall not be stayed, by the Appeal, until the instrument is executed, and deposited with the court, in which the Judgment, or order is entered; to abide the Judgment of the Appellate Court.

141st If the Judgment, or order appealed from, direct the sale, or delivery, of the possession of real property, the execution of the same shall not be stayed, unless a written undertaking, be executed on the part of the Appellant, with two, or more sureties; to the effect, that during the possession of such property by the appellant, he will not commit, or suffer to be committed, any waste thereon; ^{that,} and if the Judgment be affirmed, he will pay the value, of the

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use and occupation of the property; from the time of the appeal, until the delivery of the possession thereof, pursuant to the judgment, or order; not exceeding a sum to be fixed by the Court, from which the appeal is to be taken; and which shall be specified, in said undertaking. When the judgment is for the sale of mortgage premises, and the payment of a deficiency arising upon the sale; the undertaking shall also provide, for the payment of such deficiency.

142^d. When ever an appeal is perfected, as provided in the preceding sections of this Chapter relative to appeals; it shall stay all further proceedings in the Court below, upon the order, or judgment appealed from, or upon the matters embraced therein; and on appeal, and filing an appeal bond on appeal, from an order discharging an attachment; said attachment shall not be dissolved, but shall remain in full force, until the cause be disposed of on appeal; but the Court below, may proceed upon any other matter, embraced in the action, and not affected by the order appealed from; provided, that an appeal, shall not continue in force an attachment, unless an undertaking be executed, and filed, ~~on~~ the part of the Appellant, by at least two sufficient sureties, in double the amount of the debt claimed by him; that the appellant will pay ^{all} costs, and damages, which the respondent may sustain, by reason of the attachment; in case the order of the Court below be sustained; and, unless also, notice of the appeal be given, within five days after service of the notice of the entry of the order appealed from; and such appeal be perfected, and the undertaking mentioned in this section, be filed within five days thereafter. The undertakings, mentioned in this, and the preceding sections,

of this Chapter, relative to appeals; may be in one instrument, or several, at the option of the Appellant.

143^d An undertaking upon an appeal, shall be of no effect, unless it be accompanied by the affidavit of the sureties, that they are each worth the amount specified therein; in property situated in the Empire of Japan, over and above all of their just debts, and legal liabilities; exclusive of property, exempt from execution; except, when the Judgment exceeds the sum of three thousand dollars, and the undertaking, is executed by more than two sureties; in which case, they may state in their affidavits, that they are severally worth, amounts less, than that expressed in the undertaking; if the whole amount, be equivalent to that, of two sufficient sureties. In all cases, where an undertaking is required, on appeal, by the provisions of this decree, a deposit in the Court below, of the amount of Judgment appealed from, and three hundred dollars in addition; shall be equivalent, to filing the undertaking; and in all cases the undertaking, or deposit, may be waived, by the written consent of the respondent.

144th When Judgment is rendered upon the appeal, it shall be certified by the Court, or clerk of the Court, to which the appeal has been taken, to the Court with whom the Judgment roll is filed, or the order appealed from is entered. In cases of appeal from the judgment, the Court, or clerk of the Court, with whom the roll is filed; shall attach the certificate to the Judgment roll, and enter a minute of the Judgment of the appellate Court, on the docket, against the original entry.

In cases of an appeal from an order, the Court, or its clerk, shall enter at length in the records of the Court, the Certificate received, and minute against the entry of the order appealed from, a reference to the certificate, ~~with~~ a brief statement, that such order has been affirmed, reversed, or modified, as the case may be, by the appellate Court upon appeal.

Miscellaneous Proceedings

The word, Consul, or Judge whenever used in these Regulations shall be understood to mean also Minister whenever, or whenever, the same shall be proper and applicable to the Minister in his jurisdiction as given to him by law and also it shall include any Consul General Vice Consul or Deputy Consul actually exercising the Consular power of any Consulate

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When a judgment is recorded against one, or more of several persons, jointly indebted upon an obligation, as hereinbefore provided, those who were not originally served with summons, and did not appear in the action, may be summoned, to show cause why they should not be bound by the judgment; in the same manner, as though they had originally been served with summons.

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The summons, as provided in the last section, shall describe the judgment, and require the person summoned, to show cause why they should not be bound by it; and shall be served, in the same manner, and be made returnable, within the same time, as the original summons. It shall not be necessary to file a new complaint.

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The summons, shall be accompanied, by an affidavit of the Plaintiff, his agent, representative, or attorney, that the judgment, or some part thereof remains unsatisfied; and shall specify the amount due thereon.

148th Upon such summons, the Defendant may answer, within the time specified therein; denying the Judgment, or setting up any defence, which may have arisen subsequently; or he may deny his liability, on the obligation, upon which the judgment was recovered; except, a discharge from such liability by the Statute of Limitation.

149th If the defendant in his answer, deny the Judgment, or set up any defence which may have arisen subsequently, the summons, with the affidavit annexed, and the answer, shall constitute the written allegations in the case. If he denies his liability, on the obligation upon which the Judgment was recovered, a copy of the original complaint, and Judgment, the summons, with the affidavit annexed, and the answer, shall constitute ^{the} written allegations.

150th The issues may be tried as in other cases; but when the defendant denies in his answer, any liability on the obligation, upon which the Judgment was rendered, if a judgment be rendered against him; it shall be for the amount remaining unsatisfied, on such original Judgment, with interest thereon.

Confession of Judgement without Action

151st A Judgment by confession may be entered without action, either for money due, or to become due; or to secure any person against contingent liability, on behalf of the defendant, or both, in the manner prescribed by this Chapter.

152^d A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect:

1st It shall authorize the entry of Judgment for a specified sum:

2^d If it be for money due, or to become due, it shall state concisely the facts out of which it arose, and shall show, that the sum confessed therefor, is justly due, or to become due:

3^d If it be for the purpose of securing the Plaintiff against a contingent liability, it shall state concisely the facts constituting the liability; and shall show, that the sum confessed therefor, does not exceed the same.

153^d The statement, shall be filed with the court in which the Judgment is to be entered; who shall endorse upon it, and enter in the Judgment Book, a judgment of such court, for the amount confessed, with ten dollars costs. The statement, and affidavit, with the judgment endorsed, shall thereupon become the Judgment roll.

Submitting a Controversy without Action

154th Parties to a question in difference, which might be the subject of civil action; may, without action, agree upon a case, containing the facts upon which the controversy depends, and present a submission of the same, to any Court, which should have jurisdiction, if an action had been brought. But it must appear by affidavit, that the controversy is real, and the proceedings in good faith, to determine the right of the parties.

The Court, shall thereupon hear, and determine the case, and render judgment thereon, as if an action were pending.

155th Judgment shall be entered in the judgment books, as in other cases; but without costs, for any proceeding prior to the trial: The case, the submission, and copy of the Judgment, shall constitute the Judgment roll.

156th The Judgment may be enforced, in the same manner, as if it had been rendered in an action, and shall be in the same manner, subject to appeal.

Offer to Compromise

157th The Defendant may at anytime before the trial, or judgment, serve upon the Plaintiff, an offer, to allow Judgment to be taken against him, for the sum, or property, or to the effect therein specified. If the Plaintiff accept the offer, and give notice thereof, within five days; he may file the summons, complaint, and offer, with an affidavit, of notice of acceptance; and the Court, shall thereupon, enter judgment accordingly. If the notice of acceptance, be not given, the offer shall be deemed withdrawn; and shall not be given in evidence. And if the Plaintiff fail to obtain, a more favorable judgment, he shall not recover Costs; but shall pay the defendants Costs, from the time of the Offer.

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Witnesses

158th A subpoenae, may require, not only the attendance of the person to whom it is directed, at a particular time, and place, to testify as a witness; but may also require him, to bring any books, documents, or other things, under his control; to be used as evidence. No person shall be required to attend as a witness, before any Court, or Officer, out of the City, or Treaty Port, in which he resides; unless the distance, be less than Thirty Miles, from the City, or Port, of his residence; to the place of trial.

159th To require attendance before a Court, it shall be issued under the seal of the Court, before which the attendance is required. - To require attendance out of Court, before an Officer, authorized to administer oaths, or take testimony, in any matter; it shall be issued by such person, or Officer, or by the Judge of any United States Court. To require attendance before a commissioner, appointed to take testimony, or before any officer, or officers, empowered by the laws of the United States, ^{or of other countries,} to take testimony; it may be issued by any United States Consul, in places within their respective jurisdiction; with like power, to enforce attendance; and upon certificate of contumacy to said Consular Court; to punish contempt of their process, as such Consular Court could exercise, if the Subpoenae, directed the attendance of the witness before their Courts, in a matter pending therein.

160th The service of a subpoena, shall be made, by showing the original, and delivering a copy to the witness personally; giving, or offering to him, at the same time, if demanded by him, the fees to which he is entitled, for travel to and from, the place designated; and one days attendance there. Such service may be made, by any person; proof thereof, to be made, by the affidavit of the person serving it, or the written admission, of the person served; except in cases, when served by the Marshal, who shall return in writing on the original, his certificate of his proceedings.

161st If a witness be concealed in a building, or vessel, of, or belonging to, or in the possession of an American Citizen, so as to prevent the service of a subpoena upon him; the Court issuing the subpoena, on proof of the concealment, and of the nationality of the witness; may order the Marshal of the port, to serve the subpoena; and he shall serve it, accordingly; and for that purpose, may break into such vessel, or building, where such witness is concealed. A person present in Court, may be required to testify in the same manner, as if he were in attendance upon a subpoena, issued by the Court, and served upon him.

162nd It shall be the duty of a witness, duly served with a Subpoena, to attend at the time appointed, with, any papers under his control, required by the subpoena, to answer all pertinent, and legal questions; and unless sooner discharged, to remain until the testimony is closed.

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163^d A witness, shall answer questions, legal, and pertinent to the matter in issue, though his answer, may establish a claim against himself; but he need not give an answer, which will have a tendency, to subject him to punishment, for a felony; nor need he give an answer, which will have a direct tendency, to degrade his character; unless it be to the very fact in issue; or to a fact, from which the fact, in issue, would, ^{be} presumed. But the witness, shall answer, as to the fact of his previous conviction for felony.

164th Disobedience to a Subpoena, or a refusal to be sworn, or to answer as a witness, or to subscribe an Affidavit, or deposition, when required, may be punished as a contempt by the Court, or Officer issuing the subpoena, or requiring the witness to be sworn; and if the witness be a party, his complaint, may be dismissed, or his answer may be stricken out.

165th In case of failure of a witness to attend the Court, or the Officer issuing the Subpoena, upon proof of the service thereof; and of the failure of the witness, may issue a warrant to the Marshal of the Port, or City, to arrest the witness, and bring him before the Court, or Officer when required.

166th If a witness whose evidence is desired, is in confinement, in any prison of the United States of America in Japan; the Court, or Officer, by whose Judgment, or order, he is so confined; upon proof of his materiality, as a witness, may, by order, direct him, to be taken before the Officer, or Court, where his evidence

is required, to their testify, or may direct, that the evidence of the witness, may be taken in the prison.

167th Every person who has in good faith, been served with a Subpoena, to attend as a witness, before a Court, or other persons; in a case, where the disobedience of a witness might be punished as a contempt; shall be exonerated from arrest, in civil action, while going to the place of attendance, necessarily remaining there, and returning there from.

168th A party to an action, may take the evidence of an adverse party, or call such party as a witness; but shall not be concluded, or estopped, ~~by~~ from disproving the statement, given in evidence by him; but may rebut the same, by other testimony. If an adverse party, refuse to attend, and testify, at the trial; or to give his deposition, before a trial, or, upon a commission, when required, his complaint, or answer, may be stricken out, and judgment be taken against him; and he may also be punished, by the Court, as an other witness for contempt.

169th An affidavit, to be used before any Court, Judge, or Officer, of this Empire; may be taken, before any Consul, of the United States in this Empire. An affidavit, taken in the United States, may be taken before any Judge, or clerk, of any Court of record having a seal. An Affidavit, taken in a foreign Country, to be used in this Empire; shall be taken before an Minister, Commissioner, Secretary of Legation, or Consul of the United States in such foreign Country. When an Affidavit is taken before a Judge of a Court,

in the United States; the genuineness of the signature of the Judge, the existence of the Court, and the fact, that such Judge, is a member thereof; shall be certified, by the Clerk of the Court, under the seal thereof.

Of Depositions taken in this Empire

170th The testimony of a witness taken in this empire, may be taken by deposition, in an action, at any time after the service of the summons, or the appearance of the defendant; and in a special proceeding, after a question of fact has arisen therein, in the following cases;

1st When the witness is a party to the action, or proceeding, or a person for whose immediate benefit, the action, or proceeding, is prosecuted, or defended;

2^d When the witness resides out of the Treaty Port, or City, in which his testimony is to be used;

3^d When the witness is about to leave the Treaty port, or City, where the action is to be tried, and will probably, continue absent, when the testimony is required;

4th When the witness, otherwise liable to attend the trial, is nevertheless to infirm to attend.

171st Either party may have the deposition taken of a witness in this Empire, before any United States Consul, or other United States — Judicial Officer in said Empire, on serving, on the adverse party, previous notice of the time, and place, of examination; together, with a copy of an Affidavit, showing that the Case, is one mentioned in the last section. At any time, within the forty days, immediately after the service of summons by publication,

has been completed; and any time thereafter, when the defendant has not appeared, the notice required by this section, may be served, on the Judge of the Court where the action is pending. Such notice, shall be at least five days; and in addition, one day, for every twenty five miles, of the distance, of the place of examination, from the residence, of the person, to whom the notice is given.

172^d Either party may attend such examination, and put such questions, direct, or cross, as may be proper. The deposition, when completed, shall be carefully read to the witness, and corrected by him, in any particular, if desired; it then, shall be subscribed, by the witness; Certified by the officer taking the deposition, inclosed in an envelope; sealed, and directed to the Court in which the action is pending, or to such person, as the parties in writing, may agree upon; and delivered to such Court, or person, or transmitted through the mail, or by some safe, private opportunity; and there upon, such deposition, may be used by either party, upon the trial, or other proceedings; against any party giving, or receiving the notice, subject to all legal exceptions. But if the parties attend at the examination, no objections to the form of any interrogatory, shall be made, at the trial, unless the same, was stated, at the time of the examination. If the deposition be taken by reason of the absence, or intended absence, from the Port, or City, of the witness, or because he is too infirm to attend; proof shall be made at the trial, that the witness continues absent, or infirm, to the best of the deponent's knowledge, or belief. The deposition thus taken, may also be read, in case of the death of the witness. The deposition thus taken, may also be read, in any stage of the same action, or proceedings; by either party, and ~~it shall be read, in the trial of the~~

shall then be deemed the evidence of the party reading it.

Depositions taken out of the Empire

173^d The testimony of a witness out of the Empire, may be taken by deposition; in an action, at any time, after service of the summons; or the appearance of the defendant; and, in a special proceeding, at any time, after a question of fact has arisen therein. The deposition shall be taken upon a commission, issued from the Court, under the seal thereof, upon an order of the Court, or Judge thereof, on ^{the} application of either party, upon five days previous notice to the other. It shall be issued to a person agreed upon between the parties; or if they do not agree, to some Officer selected by the Officer granting the Commission.

174th Such proper interrogatories, direct and cross, as the respective parties may prepare, to be asked, if the Parties disagree, as to their form, by the Court, or Officer granting the order for the Commission; at a day fixed in the order, may be annexed to the commission; or when the parties agree to that mode, the examination may be without written interrogatories.

175th The commission, shall authorize the commissioner to administer an oath to the witness, and to take his deposition, in answer to the interrogatories; or when the examination is to be without interrogatories, in respect to the question in dispute, and to certify, and dispatch, the deposition to the Court; sealed in an envelope, directed to the Court, or other person designated, or agreed upon. A trial, or other

proceeding, shall not be postponed by reason of a commission not having been returned; except upon evidence, satisfactory to the court, that the testimony of the witness, is necessary, and that proper diligence, has been used to obtain it.

Administration of oaths and Affirmations.

176th Every Court of the United States in the Empire of Japan, and every Clerk thereof, and every Officer authorized to take testimony, or to decide upon evidence, in any proceedings; shall have power, to administer oaths, or affirmations.

177th When a person is sworn, who believes in any other, than the Christian religion, he may be sworn, according to the peculiar ceremonies of his religion, if there be any such; provided, that any witness, who desires it, may at his option, instead of taking an oath, make his solemn affirmation, or declaration; by assenting, when addressed in the following form; "You ^{do} solemnly affirm, that the evidence you shall give in this issue, or matter, pending between, ———, and ———, shall be the truth, the whole truth, and nothing but the truth;" Assent to this affirmation, shall be made by the answer, "I do;" A false affirmation, or declaration, shall be deemed perjury, equally with a false oath.

Inspection of documents and Writings

178th Any Court, in which an action is pending, or a Judge

thereof, may upon notice, order either party, to give to the other; within a specified time, an inspection, and copy, or permission to take a copy, of any book, document, or paper in his possession, or under his control; containing evidence, relating to the merits of the action. If compliance with the order be refused, the Court may exclude the book, document, or other paper from being given in evidence; or if wanted as evidence, by the party applying, may presume it to be such, as he alleges it to be; and the court may also punish the party, Refusing, for a contempt. This section shall not be construed, to prevent a party, from compelling another, to produce book, papers, or documents; when he is examined as a witness.

179th There shall be no evidence allowed ^{the contents of} of a writing, other than the writing its self; except in the following cases:

1st When the original has been lost, or destroyed; in which case proof of the loss, or destruction shall be first made:

2^d When the original is in the possession of the party against whom the evidence is offered, and he fails to produce it after reasonable notice:

3^d When the original is a record, or other document in the Custody of a Public Officer of the United States:

4th When the original is recorded, and a certified copy is made evidence by a law of the United States.

180th The party producing a writing as genuine, which has been altered, or appears to have been altered, after its execution, in a part material to the question in dispute; and such alteration is not

noted on the writing, shall account for the appearance, or alteration. He may show that the alteration was made by an other without his concurrence, or was made with the consent of the parties affected by it, ^{or} otherwise, properly, or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

181st The records, and Judicial proceedings of any Court, of the United States in this Empire, may be proved, by the production of the original, or a copy thereof, certified by the Court, under the seal of the Court, to be a true copy of such record.

182nd The records, and Judicial proceedings of the Courts of the United States, or of any State, or Territory thereof; may be proved or admitted in the courts in this Empire, by the attestation of the Clerk, and the seal of the court annexed, if there be a seal; together with, a Certificate of the Judge, Chief Justice, or presiding Magistrate, as the case may be, that the said attestation is in due form.

183rd A Judicial record of a Foreign Country, may be proved by the production of a copy thereof, certified by the Clerk; with the seal of the Court annexed, if there be a clerk, and a seal, or, by the legal Keeper of the record, with the seal of his office annexed; if there be a seal, to be a true copy of such record; together with a certificate of a Judge of the Court, that the person making the certificate, is the Clerk of the Court, or the legal Keeper of the record; and in either case, that the signature is genuine, and the certificate in due form; and also together with, the certificate of the Minister, or Commissioner of the United States, or of a Consul of the United States, in such

foreign Country; that there is such a Court, specifying generally the nature of its Jurisdiction, and verifying the signature of the Judge, and clerk, or other legal keeper of the record.

184th A copy of the Judicial record of a Foreign Country, shall also be admissable in evidence upon proof:

1st That the copy offered has been compared by the witness with the original, and is an exact transcript of the whole of it:

2^d That such original was in the custody of the Clerk of the Court, or other legal keeper of the same; and,

3^d That the copy is duly attested by a seal, which is proved to be the seal of the Court, where the record remains; if it be the record of a court, or if there be no such seal, or if it be not a record of a Court, by the signature of the legal keeper of the original.

185 Printed Copies, in volumes, of statutes, Codes, or other written Laws, Enacted by the United States, or any State, or Territory thereof; or Foreign Government, purporting, or proved to have been published by the authority thereof, or proved to be commonly admitted, as evidence of the existing law in the Courts, and judicial tribunals of such State, Territory, or Government; shall be admitted by the Courts, and officers of this ^{Empire} on all occasions, as presumptive evidence of such law.

186th A seal of a Court, or public Office, when required to any writ, or process, or proceeding, or to authenticate a copy of any record, or document, may be impressed with wax, wafer, or any other ~~any other~~ substance, and then attached to the writ, process,

or other proceeding, or to the copy of the record, or document, or it may be impressed on the paper alone.

Writ of Certiorari

187th A writ of certiorari, or writ of Review, may be granted, on application, by any Court of the United States in this Empire; the writ shall be granted in all cases, when an inferior tribunal, board, or officer; exercising Judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer; and there is no appeal, nor in the judgment of the Court, any plain, speedy, and adequate remedy.

188th The application shall be made on affidavit, by the party beneficially interested; and the Court may require, a notice of the application to be given to the adverse party, or may grant an order, to show cause why, it should not be allowed; or may grant the writ, without notice.

189th The writs may be directed to the inferior tribunal, board, or officer; or to any person having the custody of the record, or proceedings to be certified. When directed to a tribunal, the Judge thereof, or the Clerk, if there be one, shall return the writ, with the transcript required.

190th The writ, shall command the party to whom it is directed, to certify fully to the Court, issuing the writ, at a specified time, and place, and annex to the writ, a transcript of the record, and proceedings; (describing or referring to them with sufficient certainty) that the same, may be reviewed by the

Court; and requiring the party in the mean time, to desist from further proceedings in the matter to be reviewed.

191st If a stay of proceedings be not intended, the words requiring the stay, shall be omitted from the writ; these words, may be omitted, or inserted, in the ~~Court~~ discretion of the Court; but if omitted, the power of the inferior Court, or officer, shall not be suspended, nor the proceedings be stayed.

192^d The writ shall be served in the same manner, as a summons in a civil action; except, when otherwise expressly directed by the Court.

193^d The review upon the writ, shall not be extended further, than to determine, whether the inferior tribunal, board, or officer, has regularly pursued the authority of such tribunal, board, or officer.

194th If the return of the writ be defective, the Court may order a further return to be ^{made,} made. When a full return has been made, the Court shall proceed to hear the parties, or such of them as may attend for that purpose, and may thereupon give judgment, either affirming, or annulling or modifying the proceedings below.

195th A Copy of the judgment, signed by the Judge of the Court, or the Clerk thereof, shall be transmitted to the inferior tribunal, board, or officer, having the custody of the

record, or proceedings certified up.

195th A copy of the judgment, signed by the Judge, ~~of the Court~~ or Clerk; entered upon, or attached to the writ, and return; shall constitute the judgment roll. ~~The~~ appeal, when allowed by law; may be taken from the judgment, in the same manner, and upon the same terms, as from a judgment in ^acivil action.

Writ of Mandamus

197th Writs of mandamus, may be issued by any Court of record of the United States in the Empire of Japan; to any inferior tribunal, corporation, board, or person; to compel the performance of an act, which the law specially enjoins, as a duty, resulting from an office, trust, or station; or to compel the admission of a party, to the use, and enjoyment of a right, or office, to which he is entitled; and from which, he is unlawfully precluded, by such inferior tribunal, corporation, board, or person. This writ shall be issued, in all cases, where there is not a plain, & speedy, and adequate remedy at law, in an ordinary course of proceedings. It shall be issue upon affidavit, on the application of the party beneficially interested.

198th The writ shall be either alternative, or preumptory. The alternative writ, shall state generally, the allegation against the party, to whom it is directed; and command such party, immediately after the receipt of the writ; or at some other specified time, to do the act required to be performed;

or to show cause before the court, at a specified time, and place, why he has not done so. The preemptory writ, shall be in a similar form; excepting the words, requiring the party to show cause, why he has not done ^{which}, as commanded; shall be omitted, and a return day shall be inserted.

199th When the application to the Court, is made without notice to the adverse party, and the writ be allowed; the alternative writ shall be issued first; but if the application be upon due notice, and ^{the} writ be allowed, the preemptory may be issued in the first instance. The notice of the application, when given, shall be at least five days. The writ shall not be granted by default. The case shall be heard by the Court, whether the adverse party appear or not.

200th On the return of the alternative, or the day upon which the application of the writ is noticed, or such further day as the Court may allow, the party, on whom the writ, or notice shall have been served; may show cause, by answer under oath, made in the same manner, as an answer to a complaint in a civil action.

201st On the return day of the writ, unless a postponement should be asked for, and granted, the Court shall proceed to try and determine the issues, of law, and fact raised in the case: in the same manner, as the trial of other civil actions are conducted. If judgment be given for the applicant, he may recover also, such damage as by the evidence it appears he has

sustained, together with costs; and for such damages, and costs; an execution may issue, and a preceptory mandate, shall also be issued without delay.

202^d. The writ shall be served in the same manner, as a summons in a civil action; except, when otherwise expressly directed by the Court.

203^d. When a preceptory mandate has been issued, and directed to any inferior tribunal, corporation, board, or person; if it appears to the Court, that any member of such tribunal, corporation, or board, or such person upon whom the writ has been personally served; has without just excuse, refused, or neglected to obey the same; the Court may upon notice, impose a fine, not exceeding One thousand dollars. In case of persistence, in a refusal of obedience; the Court, may order the party to be imprisoned, for a period, not exceeding three months; and may make any orders, necessary, and proper to the complete enforcement of the writ. If a fine be imposed upon a Judge, or Consul, or other officer, who draws a salary from the United States Government, a certified copy of the order, may be forwarded to the Secretary of the Treasury; and the amount thereof, may be retained from the Salary of such Judge, or officer. Such Consul, Judge, or Officer; for his wilful disobedience, shall also be deemed guilty, of a misdemeanor in office.

Contempts

204th. The following acts, or omissions; shall be deemed

contempts:

- 1st Disorderly, contumacious, or insolent behavior toward the Judge; whilst holding Court, or engaged in his official duties, at Chambers; or towards referees, or arbitrators, whilst sitting as a referee, or arbitration; tending to interrupt, the due course of the trial, reference, or arbitration; or other judicial proceedings:
- 2^d A breach of the peace, boisterous conduct, or violent disturbance in presence of the Court, or ⁱⁿ its immediate vicinity, tending to interrupt, the due course of a trial; or other judicial proceedings:
- 3^d Disobedience, or resistance to any lawful writ, order, rule, or process; issued by the Court, or Judge, at Chambers:
- 4th Disobedience of a Subpoena, duly served; or refusing to be sworn, or answer, as a witness:
- 5th Rescuing any person, or property in the custody of any officer, by virtue of an order, or proceeds of such Court, or Judge at Chambers.

205th When a contempt is committed in the immediate view, and presence of the Court, or Judge at Chambers, it may be punished summarily, for which an order shall be made, reciting the facts, as occurring, in such immediate view, and presence; adjudging, that the person proceeded against, is thereby guilty of a contempt; and that he be punished, as therein prescribed. When the contempt is not committed, in the immediate view, and presence of the Court, or Judge at Chambers; an affidavit shall be presented to the Court, or Judge; of the facts, constituting the contempt; or a state-

ment of the facts, by the referee, or arbitrators.

206th When the contempt is not committed, in the immediate view, and presence of the Court, or Judge; a warrant of attachment may be issued, to bring the person charged, before the Court, to answer. The warrant, may be made returnable forthwith, or at such time, and place, as the Court may direct; it shall be directed to the Marshal, who shall serve the same as directed, and return the warrant into Court; with his proceedings under it, endorsed thereon.

207th When the person arrested, has been brought up, or appeared, the Court, or Judge, shall proceed to investigate the charge; and shall hear any answer, which the person arrested may make, to the same; and may examine witnesses, for, or against him; for which an adjournment may be had, from time to time.

208th Upon the answer, and evidence taken, the Court, or Judge, shall determine, whether the person proceeded against, is guilty of the contempt charged; and if it be adjudged that he is, guilty of contempt; a fine may be imposed, on him, not exceeding five hundred dollars; or he may be imprisoned, not exceeding five days, or both.

209th When the contempt, consists in the omission, to perform an act, which is yet in the power of the person to perform; he may be imprisoned, until he have performed it; and in that case, the act shall be specified in the

warrant of commitment.

210th When the warrant of arrest has been returned served, if the person arrested do not appear on the return day, the Court, or Judge, may issue an other warrant, commanding his summary arrest, and production, which shall at once be served, by the Marshal to whom it is directed, by his arresting, and producing before the Court, or Judge, the person named.

211th Whenever by the provisions of this chapter, an officer is required to keep a person arrested, on a warrant of attachment in custody, and to bring him before a Court, or Judge, the inability from illness, or otherwise of the person to attend, shall be a sufficient excuse, for not bringing him up, and the officer, shall not confine a person arrested upon the warrant, in a prison, or otherwise restrain him of personal liberty, except so far, as may be necessary, to secure his personal attendance.

Miscellaneous Provisions

212th Every direction of a Court, or Judge, made, or entered in writing, and not included in a judgment, is denominated an order. An Application, for an order, is a motion.

213th When a notice of a motion is necessary, it shall be given, if the Court be held in the same port, or City, with both parties, five days, before the time appointed for the hearing, otherwise, ten days, but the Court, or Judge, may prescribe a longer, or a

shorter time.

214th When a notice of a motion is given, or an order to show — cause, is made returnable before a Judge, or Court, and at the time fixed for the motion, or on the return day of the order, the Judge, or Court, is unable ~~there~~ to hear the parties, the matter may be deferred for a reasonable length of time.

215th Written notices, and other papers, when required to be served on the party, or attorney, shall be served in the manner prescribed in the next three sections, when not otherwise provided; but nothing in this title, shall be applicable to original, or final process, or any proceedings, to bring a party into contempt.

216th The service may be personal, by delivering to the party, or attorney, on whom the service is required to be made; or it may be as follows:

1st If upon an attorney, it may be made during his absence from his office, by leaving the notice, or other papers with his Clerk therein, or with a person having charge thereof; or when there is no person in the office, by leaving them, between the hours of Eight in the morning, and Six in the afternoon, in a conspicuous place in the office; or if it be not open, so as to admit of such service; then by leaving them, at the attorney's residence, with some person of suitable age, and discretion; and if his residence be not known, then by putting the same enclosed, in an envelope, into the post office, directed to such attorney.

2^d If upon a party, it may be made by leaving the notice, or other paper at his residence; between the hours of Eight in the morning, and Six in the evening, with some person of suitable age, and discretion; and if his residence be not known, by putting the same enclosed, in an envelope, into the Post office, directed to the party.

217th Service by mail may be made, when the person making the service; and the person on whom it is ^{to be} made, reside in different places; between which, there is a regular communication by mail.

218th In case of service by mail, the notice, or other papers, shall be deposited in the post office; addressed to the person on whom it is to be served, at his place of residence; and the postage paid; and in such case, the time of service; shall be increased one day, for every twenty five miles distance, between the place of deposit, and the place of address.

219th After appearance, a defendant, or his attorney, shall be entitled to notice, of all subsequent proceedings, of which notice is required to be given. But when a defendant has not appeared, service of notice, or papers, need not be made upon him, unless he be imprisoned, for want of bail.

220th When a Plaintiff, or a defendant, who has appeared, resides out of this Empire; and who has no attorney in the action, or proceeding; the service, may be made on the Clerk of the Court, in which the action is brought, for him; if the Court

Have a clerk; and if it have not, by leaving the same, with the judge of the Court, but in all cases, when a party has an attorney, in the action, or proceeding, the service of papers, when required, shall be upon the attorney, instead of the party, except, of subpoenas, writs, and other process, issued in the suit, and of papers, to bring him into contempt.

221

Successive actions, may be maintained upon the same contract, or transaction; whenever, after the former action, a new cause of action, arises therefrom.

222

Whenever two, or more actions, are pending at one time; between the same parties, and in the same Court, upon causes of action, which might have been joined, the Court, may order the actions to be consolidated into one.

223.

An action may be brought by one person against another, for the purpose of determining, an adverse claim, which the latter, makes against the former, for money, or property; upon an alleged obligation; and also, two, or more persons; for the purpose of compelling one, to satisfy a debt, due to the other, for which the plaintiff, is bound as security.

224

The Court shall keep amongst its records, a register of actions. It shall enter therein, the title of the action, with brief notes

under it, from time to time; of all papers, filed, and proceedings
had therein.

225.

The time within which an act is to be done, as provided in these Regulations, shall be computed, by excluding the first day, and including the last. If the last be Sunday, it shall be excluded. When the act to be done, relates to the pleadings in the action, or the undertaking to be filed, or the justification of answers, or the service of notices, other than of appeal, or the preparation of statements, or of bills of exceptions, or of amendments thereto; the time allowed in these Regulations, may be extended, for good cause shown, by the Court, in which the action is pending, or a judge thereof, but such extension, shall not exceed thirty days, beyond the time herein prescribed, without the consent of the adverse party.

226

An affidavit, notice, or other paper, without the title of the action, or proceeding in which it is made, or with a defective title, shall be as valid, and effectual, for any purpose, as if duly entitled, if it intelligibly refers to such action, or proceeding.

227th When a cause of action has arisen in the United States of America, or in some Foreign Country, and by the laws thereof, an action thereon cannot be maintained there, against a person, of lapse of time, an action thereon shall not be maintained Against him here.

Marriage

228th Each Consul shall record all marriages solemnized by him, in a book to be kept in his Office for that special purpose.

229

Divorce

Divorces may be granted from the Bonds of Matrimony, upon the following grounds:
1st Habitual Drunkenness. 2^d Extreme Cruelty. 3^d Willful desertion by one party of the other, for a period of over two years. 4th Failing wilfully, to supply the ~~common~~ common necessities of life, having the ability so to do, for a period of over two years: 5th Adultery of either party, remaining uncondoned, at the time the action is brought; and 7th Conviction of either party of a felony.

To entitle a party to maintain an action for a divorce, in any of the United States Courts in the Empire of Japan; it must be alleged in the complaint, and proven at the trial, that the applicant, for six (6) months next, preceeding the time of commencing the action, has been, and still is, ^{an actual} resident of Japan.

In proceedings of this nature, the Courts are authorized to make, and enforce all suitable orders, in relation to the care, and disposition of the Children of the parties to the action; and in relation to compelling the payment of alimony, either pendente lite, or subsequent to the determination of the case, and also, to make suitable disposition, of all common property of or belonging to the parties to the action.

230

Births and Deaths

The births, and deaths, of every American Citizen within the limits of his jurisdiction, shall likewise, be kept recorded by each American Consul.

Steamers Vessels and Boats.

231

All Steamers, vessels, and boats, shall be liable:

- 1st. For services rendered on board, at the request of, or on contract with, their respective owners; Masters, Agents, or consignees;
- 2^d For supplies furnished for their use, at the request of their respective Owners, Masters, agents, or consignees;
- 3^d For materials furnished for their construction, repair, or equipment;
- 4th For such wharfage, anchorage, and light dues, as may by subsequent Convention, or Treaty between Japan, and the United States, be allowed to be charged against them in this Empire;
- 5th For non performance, or ~~mal~~ performance of any contract, for the transportation of persons, or property, made by their respective Owners, Masters, agents, or consignees;
- 6th For injuries committed by them to person, or property. The said several causes of action, shall constitute liens upon all Steamers, vessels, or boats; and have priority in their order, herein enumerated; and shall have preference, over all other demands; provided, such liens shall only continue in force, for the period of one year, from the time the cause of action accrued.

232

Actions for demands, arising upon any of the grounds specified in the preceding section; may be brought directly against such Steamers, vessels, or boats.

233.

The complaint shall designate the Steamer, vessel, or boat by name; and shall be verified by the oath of the Plaintiff, or some one on his behalf.

234 The summons, attached to a certified copy of the complaint, may be served on the Master, Mate, or any other person having charge of the Steamer, vessel, or boat, or the owner thereof.

235-

The Plaintiff, at the time of issuing summons, or at any time afterwards, may have the Steamer, vessel, or boat against which the action is brought, attached, as security for the satisfaction of any Judgment, that may be recovered therein; As provided for attachments in other cases, by this Decree, and upon similar conditions.

236.

The Marshal to whom the writ is directed, and delivered, shall execute the same without delay; and shall, unless an undertaking to release the attachment be given, attach, and keep in his custody, the Steamer, vessel, or boat named therein, with its tackle, apparel, and furniture; unless discharged by due course of law; but the Marshal, shall not be authorized by any such writ, to interfere with the discharge of any merchandise, on board of such Steamer, vessel, or boat, nor with the removal of any trunks, or other property of passengers, or of the Captain, Mate, Seaman, Steward, Cook, or other person employed on board.

237.

The Owner, Master, agent, or consignee of the Steamer, vessel, or boat against which the action is brought, may appear, and answer, or plead to the action, and may except to the sufficiency of the sureties, on the undertaking, filed on behalf of the Plaintiff; and may require sureties to justify, as in actions against individuals, upon bail, or arrest.

238 All proceedings in actions under the provisions of this act, shall be conducted in the same manner, as in actions against individuals; except, as otherwise herein provided; and in all proceedings subsequent to the complaint, the Steamer, Vessel, or boat may be designated, as defendant.

239.

After the appearance to the action, of the owner, master, agent, or consignee, the attachment may on motion be discharged, in the same manner, and on like terms, and conditions, as attachments in other cases, subject to the provisions, of the second, section following this.

240.

If the attachment be not discharged, and a judgment be recovered in the action, in favor of the Plaintiff, and an execution be issued thereon: The Marshal shall sell at public Auction, after publication of notice of such sale, for ten (10) days; the Steamer, Vessel, or boat with its tackle, apparel, and furniture, ~~or~~ such interest therein, as may be necessary; and shall apply the proceeds of the sale, as follows:

1st When the action is brought for demands, other than the wages of mariners, boatmen, and others employed in the service of the Steamer, Vessel, or boat sold; ~~for~~ the payment of the amount, of such wages, as specified in the execution;

2^d To the payment of the judgment, and costs, including his fees, and

3^d He shall pay any balance remaining, to the Owner, Master, agent, or consignee who may have appeared in the action; or if there be no appearance, then into Court, subject to the claim of any party, or parties, legally entitled thereto.

241

Any mariner, boatman, or other person employed in the

service of the Steamer, Vessel, or Boat attached; who may wish to assert his claim for wages against the same; (the attachments being issued for other demands than such wages,) shall file an affidavit of his claim, setting forth the amount, and the particular service rendered, with the Clerk of the Court, and thereafter no attachment shall be discharged, upon filing an undertaking, unless the amount of such claim, or the amount determined as provided in the next section, be covered thereby, in addition to the other requirements; and any execution, issued against such Steamer, Vessel, or Boat, upon Judgment recovered thereafter; shall direct the application of the proceeds of any sale: First, to the payment of the amount of such claims filed; or the amount determined, as provided in the next section, which the Clerk shall insert in the writ; and, second, to the payment of the Judgment, and costs, and ~~Master's~~ fees; and shall direct the payment of any balance, to the owner, master, agent, or consignee who may have appeared in the action; but if no appearance be made by them therein; it shall direct the deposit of the balance in Court.

242

If the claim of the mariner, boatman, or other person filed with the Court, or its Clerk, as provided in the last section; be not contested, within five (5) days, after notice of the filing thereof, by the Owner, Master, Agent, or consignee of the Steamer, Vessel, or Boat against which the claim is filed; it shall be deemed to be admitted; but if contested, the Court, or its Clerk, shall inquire upon the affidavit thereof, a statement; that it is contested, and the grounds of the Contest; and the Court, shall, as soon as convenient thereafter, summarily hear, and determine

243.

The notice of the sale, published by the marshal; shall contain a statement of the measurement, and tonnage of the Steamer, Vessel, or boat; and a general description of her condition.

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~~From~~ orders, and Judgments under this Chapter; an appeal may be taken, by the owner, Master, agent, or consignee, on the same terms, and conditions; as appeals, in actions against individuals.

245-

Costs.

~~230th~~ The measure, and mode of Compensation of Attorneys, and counsellors, shall be left to the agreement, express, or implied of the parties; but there shall be allowed to the prevailing party, his necessary costs, and disbursements in the action, or special proceedings in the nature of an action; except, as herein otherwise provided.

246

~~231st~~ When several actions are brought on one bond, or undertaking, promissory note, bill of Exchange, or other instrument in writing; or in any other case, for the same cause of action, against several persons, who might have ^{been} joined, as defendants in the same action; no costs shall be allowed to the Plaintiff, in more than one of such actions; which may be at his election, if the party proceeded against, in the other actions, were at the commencement of the previous action, openly within this Empire; but the disbursements of the Plaintiff, shall be allowed to him in each action.

247.

~~232^d~~ Costs shall be allowed of course, to the Defendant; upon a Judgment in his favor, except, as herein otherwise provided. When there are several Defendants in an action, making several defences; such of the Defendants, as are not recovered against, shall be allowed their proper costs; When a New trial is ordered, or a judgment is modified; the costs upon appeal, shall be in the discretion of the Appellate Court.

248

~~233^d~~ When in an action for the recovery of money only; the defendant alleges in his answer, that before the commencement

of the action he tendered to the Plaintiff, the full amount to which he was entitled; and there upon deposits in Court, for the Plaintiff; the amount so tendered; and the allegation be found to be true, the Plaintiff, shall not recover costs; but shall pay costs to the Defendant.

249

~~247th~~ In an action prosecuted, or defended, by an executor, administrator, trustee of express trust, or a person expressly authorized by statute; cost may be recovered as in an action ^{by, or} against a person, prosecuting; or defending in his own right; but such costs, shall by the Judgment, be made chargeable only, upon the estate, fund, or party represented; unless the Court, shall direct the same to be paid, by the Plaintiff, or defendant, personally; for mismanagement, or bad faith, in the action, or defence.

250

235th When the decision of a Court of inferior Jurisdiction, in a special proceeding, is brought before ^{a Court of} Higher Jurisdiction for a review, in any other way than by appeal, the same costs, shall be allowed as in cases on appeal; and may be collected by execution, or in such manner, as the Court may direct, according to the nature of the case.

251

236th The party in whose favor ~~the~~ Judgment is rendered, in any action, or proceeding; who claims his costs, shall deliver to the Court, or its Clerk, within two days, after the decision is rendered; ~~under~~ (unless the Court otherwise specially direct) a memorandum of the items of his costs, and necessary disbursements in the action, or proceeding; which memorandum, shall be verified by the Oath of the party, or his attorney; stating that the items are correct, and that

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the disbursements, have been actually made, or necessarily incurred, and are to be paid, in the action or proceeding.

252

~~237th~~ In entering up a Judgment, costs, and interests, shall be included, to the date of entry, and if the Judgment, be for the recovery of money alone, or for the value of personal property, late and unjustly detained; the Judgment, shall bear interest, at the rate of twelve (12) per-cent per annum until paid; and when required, execution shall issue, for the amount of the Judgment, and interest due thereon, at the date of issuing such writ, with subsequently accrued costs.

253

~~238th~~ When the Plaintiff in an action, resides out of this Empire; or is a foreign Corporation, security for the costs, and charges, which may be awarded against such Plaintiff; may be required by the defendant. When required, all proceedings in the action shall be stayed, until an undertaking, executed by two, or more persons, be filed with the Court, to the effect, that they will pay such costs, and charges, as may be awarded against the Plaintiff, by Judgment, or in the progress of the action, not exceeding the sum of three (3), hundred dollars. Each of the sureties shall justify on the undertaking, as required in attachment, and other proceedings, a failure for thirty days, after being served with such notice, to give such security, shall operate as a discontinuance of the action.

254

Fees
In Consular Courts.

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| 229 th In all cases when the amount in question, is not more than \$500 ^{cs} ; | 5 00. |
| In all cases when it is over \$500 ^{cs} ; | 15 00. |
| In personal actions, and special proceedings, not brought for the recovery of money, or damages, if the action, or proceedings be not defended, and be determined without a trial; | 5 00. |
| In such actions, if a defence is made, and a trial had, | 15 00. |

255

Clerks Fees

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| 278 th For issuing all writs, warrants, attachments, or other compulsory process, including the Seal, | 1 50. |
| For docketing every suit commenced; | 1 00. |
| For issuing writs of Execution, including Seal; | 1 00. |
| For Summons, and Subpoenas, including Seal; | 50. |
| For recording the testimony in a case, for each hundred words; | 20. |
| For copying the same for transcript upon appeal, or for any other purpose, at the request of the party, or for making copies of any other documents, or papers, when requested; on appeal, or otherwise, for each hundred words; | 20. |
| For drawing notices, orders, or judgments, for each hundred words, or a fraction thereof; | 20. |
| For every seal to process issued, other than upon attachment, writs, warrants, summons, Subpoenas, or other compulsory process; | 1 00. |
| For filing each paper, upon the return of the same by the Marshal; and for all papers filed in Court, in any action, or proceedings, for each, | 10. |

| | \$ | cts |
|---|----|-----|
| ✓ For administering each oath, or affirmation; | | 25. |
| 256 ²⁵⁶ <u>Marshall's Fees.</u> | | |
| ✓ For apprehending a deserter, and delivering him on board the vessel he deserted from; to be paid by the vessel, before leaving port; | 5 | 00. |
| ✓ For searching for the same on request of the Captain, or owners, and if not found, his services to be certified by the Consul, and on his order, to be paid by the said ship; | 2 | 00. |
| ✓ For serving any writ, warrant, attachment, or other compulsory process, for each person served; | 2 | 00. |
| ✓ For serving summons each person; | 1 | 00. |
| ✓ For returning all writs, attachment, warrants, and summons; | | 50. |
| ✓ For each bail bond made out, and received by him; and approved, | 1 | 00. |
| ✓ For receiving a prisoner under a Commitment, or discharging him from arrest, by order of the Court; | 2 | 00. |
| ✓ For Subpoenaing a witness; | | 50. |
| ✓ For Copy of subpoena, and return on the original; | | 20. |
| ✓ For each days attendance upon Court during a trial, or an investigation; | 3 | 00. |
| 907 ✓ For levying an execution, or executing a writ of restitution; | 1 | 50. |
| For advertising property for sale; | 2 | 00. |
| For releasing property from seizure, under execution, when ordered so to do by the Court, or the Plaintiff; | 3 | 00. |
| For travelling fees, in serving all processes, each mile, actually travelled in going, and returning; | | 15. |
| ✓ For serving every notice not heretofore provided for upon order of the Court, or one of the parties in an action, in addition to the usual travelling fees; | | 50. |

✓ For selling property under execution, or freehold property, held under an attachment; when the amount collected, does not exceed One thousand dollars; Five, 5, per-cent.

✓ If over one and not exceeding Five Thousand dollars; Three, 3, per-cent.
If over Five Thousand dollars; Two, 2, per-cent.

Interpreters Fees.

257 ~~242~~ For each days attendance upon Court during the progress of a trial, or examination, upon order of the court; 3 00.

✓ For making any required translation, of any document, or paper, containing not over one hundred words; 1 00.

For each additional hundred words; 1 00.

~~243~~ 258 Witness's Fees

For every days attendance at Court, under a Subpoena; 1 50.

For each mile of travel, in going to, or returning from, Court; 16.

Assessors. Fees.

259 ~~244~~ For each days attendance upon Court when sworn and serving as such, including travelling fees; 3 60.

260 Ministerial Court.

~~245~~ The fees of the Court, and its Officers, shall be the same, as herein before prescribed, for the Consular Court, except, in cases brought before said Court, upon appeal; in all of which cases, a Court fee shall be charged, of: 15 00.

In addition to which, the same fees as Consuls are allowed to charge; shall be allowed for the issuance, filing, of all papers; and processes, and also, for administering oaths, &c.
The fees of Clerk, Marshal, Interpreter, &c, in a Ministerial

2
Court; shall be the same in appellate, as in other cases.

Provided, That no other, or greater charges, shall in any action, or proceeding be made, for any service, or services, above specified, by any Court; or any officer thereof; and, Provided, further, that after the determination of every action, and proceeding, the Court, or its clerk; shall enter in the Judgment book, in which the Judgment in the case is entered; a full and particular statement, of all fees, of the Court, Marshal, Interpreter, Witnesses, and Assessors; allowed, and paid in the action, and shall, upon the demand of any party, to an action; or his Attorney, furnish such statement in detail, or a copy thereof; as a condition to the right, to enforce the collection of the same.

261
Habeas Corpus.

261

Any American citizen in Japan, illegally restrained from his personal liberty; may by petition, to any Court of the United States in said Empire, obtain the benefit, of a Writ of Habeas Corpus.

262.

The application for such Writ, shall be made, by a Petition verified by the petitioner, or some one on his behalf; setting forth the citizenship, and place of imprisonment of the applicant; with a brief statement of the reasons, that led to his imprisonment, to the best of his knowledge, and belief; and also a specific statement, as to the person, in whose custody he there is.

263.

The Court to which such petition is presented, shall forthwith issue the writ; which shall be directed, to the person named in said petition, as being the person having the petitioner in his custody; and shall require such person, at a specified time, and place; to appear before the Court, with the petitioner; and at that time, to return the said writ to the Court that issued it; with his reasons for holding said petitioner in his custody, stated in writing upon said writ.

264.

Upon the return day of said writ, and when the petitioner shall have been brought before the Court issuing such writ; the Court, shall at once, and in a summary manner, proceed to hear, and enquire, into the cause of the petitioner's detention; and to

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that incl, may summon, and enforce the attendance of witnesses, with such documents, and papers as may be required, in the same manner, as in other cases; and, after hearing the cause, may direct the discharge of the petitioner, or may remand him back to the custody of the officer, or person holding him under arrest; and shall award costs, as in other cases.

205.

If from the return made, it appears that the person so restrained; is held by virtue of a commitment, warrant, or other process of a Court having jurisdiction over him; and over the offense of which he stands charged; or convicted; the Court shall restrict its examination, to the question of the regularity of the proceeding; and process, by virtue of which, the arrest, and imprisonment was directed.

206.

Any Citizen of the United States, or Officer thereof, who shall wilfully neglect, or refuse, to obey the order of any Court of the United States in this Empire; in a proceeding of this nature; shall be liable to punishment for Contempt of Court, as in other cases.

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- Assessors -

267.

Persons to be qualified to be chosen, and to act as such, must be ^{male} citizens of the United States of America, ^{over the age of twenty-one years,} resident in this Empire, nominated by the Consul of the Port, or City, where they reside to the Minister of the United States of America in the Empire; and their nomination approved by him within twelve months, next preceding the time when they are called upon, to act as Assessors. - And it is hereby made the duty, of all Consuls of the United States in the Empire of Japan; to nominate a list of persons, in the month of January of each year to the Minister, as Assessors; certifying upon the list, sent up by him to the Minister, that all of the persons therein named, are known to him the Consul; to be citizens of the United States of America, and residents of said Empire; and to be of good moral character, and to possess the proper qualifications to act as such. Which list when approved, and returned by the Minister, shall be filed by the Consul, and a Certified Copy of the same shall be posted up, and kept posted, in some conspicuous place, in the Consulate.

78

Criminal Proceedings

268.

Proceedings in criminal cases can only be commenced by a written complaint, sworn to by the complaining party; and before process issues it shall issue against the person complained of, the Judge of the Court, with whom the same is filed, shall certify thereon in writing, that he has reasonable grounds for believing, that the contents of the same are true.

269.

The party charged, shall immediately after his arrest, be provided with a certified copy of the Complaint made against him; and in all cases, shall be entitled to a speedy, and a public trial.

270.

When the offense charged, is such that the party charged, is entitled by law to have Assessors sitting in the case with the Judge, such Assessors, shall be selected in the manner provided for in civil cases; they shall be similarly sworn, and may be similarly examined, and shall be liable to challenge, either by the Defendant, or by the People, upon any of the following grounds to wit:

- 1st That such person has formed, or expressed, an unqualified opinion, as to the guilt, or innocence of the Defendant, of the crime with which he stands charged;
- 2nd That such person is a material, or necessary witness, on behalf of one, or both of the parties to the proceeding;
- 3rd That such person is related by the ties of consanguinity, or affinity, to either the complaining witness, or the Defendant.

within the third degree.

4th. Having served as an Accuser, or been a witness, on a previous trial of the same person, for the same offense; or,

5th. That such person, is not a Citizen of the United States of America; or if such, that his name does not appear, on a list of persons, selected by the Consul to serve as assessors; which was submitted to, and approved by the Minister; as required by law, and these Regulations.

271.

The personal presence of the accused, shall in all cases be required, throughout the trial of a Criminal case. Before the trial commences, the Complaint-against him, shall be read over to him, by the Court, or its Clerk, and he shall be required to plead thereto. Which plea shall be Guilty, or Not Guilty; or he may demur to the Complaint, ^{on any of the following grounds,} that the Court has no jurisdiction over the person, or the offense charged; or that more than one offense is charged in the Complaint; or that the Complaint is so ambiguous, and uncertain, that a person of common understanding, cannot understand what offense is charged; with particulars of time, place, and person. - In all cases the plea of the Defendant, must be personal, and in all cases of felony, the Defendant shall be allowed, at least thirty four hours; in which to plead if he requires it; and in misdemeanors, the Court shall grant such time to plead, as may be deemed reasonable. - Immediately after pleading, the Court shall enter the substance of the Defendants plea in its docket; and the trial shall proceed; unless for

good cause shown, the Court shall grant an adjournment.
272.

The accused, shall in all cases, be allowed to have the benefit of counsel, in all stages of the case if provided by himself, and in prosecutions for felony, if he have no Counsel, the Court may appoint some person to act for, and assist him if he requests it. Reasonable delay shall also be granted to either party, as in civil cases to procure material testimony.

273.

The testimony of an absent person, may be taken and used in criminal, as in civil cases, when the attendance of such witness, cannot be procured, or when ^{from} the nature of the application, it does not appear, that the application is made solely for delay, or when if granted, it will not postpone the trial for an unreasonable length of time.

274.

Persons subpoenaed as witnesses, shall not be entitled in a criminal proceeding, to demand any fee, for attending as such; nor shall they be allowed fees, in any criminal case, except when so ordered by the Court.

275.

In all criminal trials, the Defendant ^{shall} ~~is~~ be given ~~entitled~~ to the benefit of every reasonable doubt, and is to be considered innocent, until he is proven to be guilty.

276.

In all criminal proceedings, the complaint shall not charge but one offense; but the Defendant, may be convicted of any lesser offense, necessarily included within the greater one charged (as that of Manslaughter when the charge is Murder.) The offense shall be stated, with a reasonable degree of certainty, as to the time, ^{place,} and manner of its commission; and the evidence admitted in the action, shall be confined to the allegations of the complaint; and the judgment shall be guilty, or not guilty, of the offense, as charged.

277.

In cases where an appeal is allowed by law; the mode of proceeding to perfect the appeal, shall be the same in Criminal, as in Civil cases.

278.

Applications for a new trial in criminal cases, shall in the first instance, be addressed to the Court in which the case was tried; and when an appeal is taken from the judgment, the Appellate Court; shall have power, to review the proceedings had, in relation to the application made for a new trial; as also all interlocutory orders made in the case.

279.

Applications for new trials in criminal cases, may be made, on either, or all of the grounds stated in the provision, in these Regulations, relative to applications for new trials in civil cases, except the fifth; and in the practice governing the making, and disposition of the

motion, the Court shall be governed by the said Regulations, relative to similar motions in civil cases.

280.

A person charged with crime, shall have permission to testify on his own behalf; and shall be informed, of this right by the Court before his trial is proceeded with; but the refusal of a person, so charged, to testify, shall not be construed, into being a confession of guilt; or be allowed to militate against him.

281.

When a punishment is by a fine, costs may be included, or omitted, at the Court's discretion. An alternative sentence, of not exceeding thirty days imprisonment; shall take effect on the non payment of any part of the fine, or costs, adjudged, in any criminal proceeding.

282.

Any person before conviction, may be admitted to bail, by the Court which issued the process for his arrest; except, in capital cases, where the proof is evident, or the presumption of his guilt is great. After conviction, and an appeal is perfected; the Minister, only can admit a person to bail.

283.

A Court applied to, to release a person upon bail, shall at once fix the amount of bail required; (if the case be a bailable one) and the Defendant, may then give security, in double that sum, by an undertaking con-

- detained for his appearance at the trial, and that he will under himself, amenable to the judgment of the Court in the action, as soon as required; and may be given, by an undertaking, executed by one, or more sureties; as is provided, in cases of arrest, and bail, in civil cases; with like justification of the sureties.

284.

Any surety, on any bail bond, may at any time before the trial of the defendant, surrender him to the Court, and be released from his undertaking, upon payment of all costs, and charges of the prosecution to that date. The Court, when a Defendant is thus surrendered, shall at once demand him to custody for that, but may accept new bail. Excessive bail, shall in no case be required, or exacted.

285.

Any Complainant, may be required to give security, for costs of the prosecution, including those of the accused; and every Complainant, not a Citizen of the United States of America, or a subject of the Japanese Empire, shall be required to give such security, unless

years: For misdemeanors at the Common Law, the punishment, shall not in any case exceed, a fine of five hundred dollars, or imprisonment for the period of six months; or by both, such fine, and imprisonment.

289.

A person convicted of a felony, or twice convicted of a misdemeanor; may be sentenced to

- detained for his appearance at the trial, and that he will under himself, amenable to the judgment of the Court in the action, as soon as needed; and may be given, by an undertaking, executed by one, or more sureties; as is provided, in cases of arrest and bail, in civil cases; with like justification of the sureties.

284.

- Any surety, on any bail bond, may at any time before the trial of the defendant, surrender him to the Court, and be released from his undertaking, upon payment of all costs, and charges of the prosecution to that date. The Court, when a Defendant is thus surrendered, shall at once demand him to custody for trial, but may accept new bail. Excessive bail, shall in no case be required, or exacted.

285.

Any Complainant, may be required to give security, for costs of the prosecution, including those of the accused; and every Complainant, not a Citizen of the United States of America, or a subject of the Japanese Empire, shall be required to give such security, unless in the opinion of the Court, justice will be better promoted otherwise. When such security is required by the Court, and refused, the proceeding may be dismissed.

286.

In any criminal proceeding, if the defendant be acquitted, and the Court in its judgment, entered in the case, include a finding, that the prosecution, was

without probable cause, it shall direct the party, making the Complaint, to pay the whole cost of the proceeding, and may, by execution, and in a summary manner, compel the payment of the same.

287.

Courts will ordinarily encourage the settlement of all prosecutions, other than those for felonies. Compounding a felony, shall not be allowed; and any person guilty thereof, may be tried and punished, with a similar degree of punishment, as by law is provided for, the punishment of the felony itself.

288.

The punishment of persons convicted of Crimes, in the Courts of the United States within this Empire, except in such cases, as are otherwise provided by law; shall be as follows:

Murder in the first degree, shall be punishable by death:

Murder in the second degree, by imprisonment for life:

Murder in any other degree, or Manslaughter, by imprisonment, for not less than five, nor more than twenty years:

All other felonies, by imprisonment; not exceeding, ten years: . For misdemeanors at the Common Law, the punishment, shall not in any case exceed; a fine of five hundred dollars, or imprisonment for the period of six months; or by both, such fine, and imprisonment.

289.

A person convicted of a felony, or twice convicted of a misdemeanor, may be sentenced to

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deportation, and perpetual banishment from
the Empire.

290.

All Crimes shall be known, as felonies, or
Misdemeanors, as thus classified, by the rules
of the common law.

291.

Courts shall be the same in Criminal, as
in Civil cases; except, that of witnesses; But shall
in no case, be charged against the Government
of the United States of America.

Legation of the United States
to Japan. Yokohama September 1st 1870
C. C. DeLong.

U. S. Consulate Yokohama Japan Sept. 2nd 1870.
Assented to Charles D. Shepard
U. S. Consul

U. S. Consulate Kanagawa Japan Sept. 6th 1870

Assented to

Samuel Lyon

U. S. Consul

U. S. Consulate Hakodate Japan

September 21st 1870

United States Consulate

Osaka Japan Sept 8th 1870

Assented to

Assented to

J. Scott Stewart

E. E. Rice

U. S. Consul

Consul.

U. S. Consulate, Nagasaki Japan Sept 14th 1870.

Assented to, Willie P. Mangum,

U. S. Consul.